No. [illegible]

[illegible], as Director of the Motor Vehicle Department of the State of California; HOWARD B. DEEMS, as Assistant Director of said Motor Vehicle Department of the State of California; JOHN C. CORBETT, [illegible] STEWART, R. E. COLLINS, RAY [illegible] and RAY L. RILEY, as members of the State Board of Equalization and constituting said board in the State of California; and H. [illegible] MOUN,

Appellants,

vs.

HOWARD MORP, doing business under the first name and style of PACIFIC WHOLESALE AUTOMOBILE COMPANY; UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation; and CONTINENTAL CASUALTY COMPANY, a corporation,

Appellees.

BRIEF OF APPELLANTS

With Argument

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ARGUMENT

I

Chapter 402, Statutes of 1935 of California, does not discriminate against or burden interstate commerce, or deny equal protection of the laws 27

A. The limitation of Chapter 402 to the movement of vehicles from without the state does not cause any discrimination or burden interstate commerce, because the included class comprises all those and only those who move motor vehicles in caravans or fleets on the California highways. The definition of the class aptly describes those whose practices created the necessity for the legislation, and is the only practical and workable definition; on this see also "B, 2, (1)" below 29

B. That Chapter 402 is not in terms limited to the movement of fleets or caravans, but includes single cars, does not result in any discrimination against or burden upon interstate commerce, or deny equal protection of the laws, because:

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1. There is no appreciable movement of single cars from without the state ---------- 45

2. Even though the movement of cars from without the state should include a considerable number of single cars, this would not invalidate the classification, because:

(1) The inclusion of single cars in the class is necessary to make a workable statute and is a permissible margin to insure enforcement -- 49

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The permit fee of $15 per car required by Chapter 402 is not excessive or unreasonable; it is a charge for the privilege of using the highways and is a police power regulatory fee, and its exaction does not violate the Fourteenth Amendment or the Commerce Clause ------- 61

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B. The last sentence of section 6 stating that the fees are to reimburse the state for the expense of policing the highways does not prevent the act from imposing a charge for the privilege of using the highways. This sentence has no effect upon the working of the act or the disposition of the fees collected and should not control the construction of the act, because:

1. This court must ascertain the true nature of the fee by ascertaining the operation and effect of the act ---------- 70

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2. A statute susceptible of two constructions should be given the construction favoring its constitutionality ---------- 71

3. If this sentence should require a construction making the act unconstitutional it can be severed from the act ---------- 73

C. The permit fee is a charge for the privilege of using the highways and is a police power regulatory fee and is not excessive in amount as to either separately or as both ---------- 75

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The provision in Chapter 402, that the included class shall be subject to all of the laws relative to the transportation of property for hire by motor vehicle, does not violate the Fourteenth Amendment, either in imposing unconstitutional restrictions upon appellee or making him assume the status of common carrier against his will 80

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1936

No. 456

RAY INGELS, as Director of the Motor Vehicle Department of the State of California; HOWARD E. DEEMS, as Registrar of the Motor Vehicle Department of the State of California; JOHN C. CORBETT, FRED E. STEWART, R. E. COLLINS, RAY EDGAR and RAY L. RILEY, as members of the State Board of Equalization and constituting said board in the State of California; and E. SEYMOUR,

Appellants,

vs.

HOWARD MORF, doing business under the firm name and style of PACIFIC WHOLESALE AUTOMOBILE COMPANY; UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation; and CONTINENTAL CASUALTY COMPANY, a corporation,

Appellees.

BRIEF OF APPELLANTS

With Appendix

Appeal from the District Court of the United States for the Southern District of California, Central Division.

OPINION BELOW

The opinion of the district court is reported in 14 Federal Supplement 922 (R. 76). The dissenting opinion appears at page 928 (R. 85).

STATEMENT OF THE CASE

This is an appeal from the final decree of a district court of three judges (Judicial Code, section 238, par. (3), and section 266; U. S. C., Title 28, section 345, par. 3, and section 380), which enjoined appellants, defendants below, officers of the State of California, from enforcing against appellee Howard Morf, doing business under the firm name and style of Pacific Wholesale Automobile Company, plaintiff below, the provisions of Chapter 402 (page 1453), Statutes of 1935 of California (Appendix A, page 86) as unconstitutional.

Appellee's bill of complaint asked temporary restraining order, interlocutory injunction and permanent injunction against the enforcement of the statute. Upon the filing of the bill, temporary restraining order issued, and order issued requiring appellants to show cause why interlocutory injunction should not be granted (R. 12). Appellants filed return to said order to show cause and answer (R. 14). The cause came for hearing before the court of three judges upon said show cause order and evidence was introduced by appellants and appellee Howard Morf. It was stipulated the court could enter final decree without further hearing.

On May 5, 1936, the court, one judge dissenting, filed its opinion (R. 76), holding the act in conflict with the commerce clause, equal protection of the laws and due process clauses of the federal constitution. The dissenting judge filed an opinion that the act is valid (R. 85). Thereafter the court filed its findings of fact and conclusions of law (R. 33). Appellants filed exceptions to such findings and conclusions (R. 23). On June 8, 1936, the court entered the final decree appealed from (R. 44). The district court allowed this appeal August 14, 1936 (R. 73).

While the temporary restraining order was in effect, appellee Howard Morf filed bonds, as required by such order, with appellees United States Fidelity and Guaranty Company and Continental Casualty Company as sureties. The final decree exonerated the sureties and they were made parties to this appeal (R. 73). For brevity and convenience the term appellee as used hereafter means the plaintiff below unless otherwise stated.

The Issues

The act which is attacked by appellee, Chapter 402 (page 1453), Statutes of 1935 of California (Appendix A), became effective September 15, 1935. It is commonly referred to as the "Caravan Act." It defines, in section 1, "caravaning" as

> "The term 'caravaning' as used in this act shall mean the transportation from without the state of any motor vehicle operated on its own wheels or in tow of another motor vehicle, for

the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturer's representative, purchaser or prospective purchaser, whether such agent, dealer, manufacturer's representative, purchaser or prospective purchaser may be located within or without this state. * * *"

It is provided in section 2:

"No person, firm or corporation shall use any highway in this state for caravaning motor vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California a special permit as to each vehicle so caravaned, for the use of the highways of this state in caravaning such vehicle, * * *."

Section 3 requires:

"a fee of fifteen dollars for each motor vehicle for which a caravan permit may be issued, whether such vehicle be operated under its own power or in tow of another vehicle * * *."

Section 4 provides in part:

"No permit issued under this act for caravaning motor vehicles or vehicles shall be transferable either as between persons or as to the vehicle for which it is issued, and shall only be valid for the trip or trips to be specified in said permit, and in no event shall such permit be valid for a period of more than ninety days after it shall have been issued. * * *"

Section 5 provides in part:

"The fee paid for any caravaning permit issued under this act shall be in lieu of all

other registration fees and license fees for the use of public highways in this State, by motor vehicle during the period that such motor vehicle may be operated under and in accordance with such permit upon the public highways in this State; * * *."

Section 6 is in part:

"All fees from the issuance of permits collected by the Motor Vehicle Department under this act shall be paid into the general fund in the State treasury."

It is also provided that when three or more vehicles or groups of vehicles are operated they must be spaced at least 150 feet apart (Sec. 2); that parties engaged in caravaning vehicles must comply with the laws relating to transportation for hire by motor vehicle except that no other license fee is required but the $15 permit fee fixed by section 5 (Secs. 1, 3, 5); and penalties for violation are fixed (Sec. 7).

Appellee is now and ever since 1928 or 1929 has been engaged at Los Angeles in the wholesale used car business. He buys used cars in states other than California and has them driven to his place of business in Los Angeles where he sells them to retail dealers. Obviously his operations are within Chapter 402. He claims in his bill of complaint that the act violates the "Commerce Clause" of section 8 of Article 1 of the constitution, and the "Due Process of Law" and "Equal Protection of

the Laws" clauses of the Fourteenth Amendment (R. 7).

Appellants' return and answer denies the allegations of unconstitutionality and alleges facts to support the classification: that the persons classified by the act conduct a form of motor vehicle traffic so different from other forms of highway traffic as to justify separate classification; that they customarily and ordinarily move motor vehicles in long processions or caravans, many of the cars being joined in two-car units with one car towing another; that this manner of operations causes unusual and hazardous traffic conditions and law violations and is a special commercial use of the public highways.

District Court's Findings of Fact

The district court entered findings of fact and conclusions of law (R. 33), to which appellants excepted (R. 23). A reading of such findings will show that the so-called findings of fact are largely argumentative propositions of law. As to the actual findings of fact, we submit that every finding of fact on a controversial issue is contrary to the plain and undisputed evidence.

We shall show this to be so in detail as we review the record. At this point, however, we summarize the findings of fact and indicate briefly wherein they are contradicted by the evidence.

Of the affirmatively stated findings of fact, the 4th, 6th, 7th, 20th, 23d, 27th except last two sen-

tences, 31st, and 32d, are argumentative propositions of law; and the same is true of negatively stated findings of fact 1 and 5.

The 1st, 2d, 3d, 5th, 10th, 12th, 13th, 18th, 28th, 29th and 30th affirmatively stated findings of fact, while somewhat mixed as to findings of fact and conclusions of law, are not disputed.

Affirmatively stated findings of fact 8, 9, and the last two sentences of 27, and negatively stated findings 3, 4, 6, 7, and 8, can be summarized as follows:

No unusual police problem is created by the driving of a single vehicle into the state on its own wheels for purpose of sale. Not all cars brought in on their own wheels for purpose of sale are in fleets or towed in tandem; more than fifty per cent are in fleet. A fleet of more than four automobiles creates certain traffic difficulties but these are the exception rather than the rule and are not serious. The tandem-towing method creates no special hazards. The drivers and the driving of cars brought into the state for purpose of sale cause substantially no more problem than other drivers. Stolen or fraudulently registered cars are not present among such cars any more than among all cars in the state.

As to such findings, however, the evidence is that substantially all of the vehicles brought into the state on their own wheels for purpose of sale are in fleets or caravans of 8 to 50 cars. (R. 47, 51, 56, 60, 62, 63) The evidence specifically shows that a caravan of four or more cars is a definite highway

hazard (R. 55, 56), that law violation and unusual hazard is the rule in the operation of caravans and that a caravan as to which the contrary is true is an unusual and glowing exception (R. 49).

Affirmatively stated findings of fact 11, 14, 18, 19, 24, and 25, and negatively stated finding 2, can be summarized as follows:

Appellee's business, is chiefly wholesale automobile dealer. The purchasing of automobiles and the driving them over the highways to his place of business in Los Angeles is necessary to the continuance of his business. He buys automobiles and has them driven to California singly, by twos coupled, and in fleets of several, and while so operated they are directly under his supervision. He brings into the state approximately between 20 and 25 per cent of all the cars brought into the state on their own wheels for purpose of sale. Between 30 and 40 per cent of the cars he brings in come in singly and not in company with other cars. Although he has operated in this manner for several years he has caused no traffic trouble. His business is large and lucrative, but he operates upon a small margin of profit, and the $15 permit fee would absorb his net profit and ruin his business and a large part of the used car business in California.

Contrary to such findings, however, it is plain, even from these findings, that a principal element in appellee's business is transporting used automobiles to California; appellee's bill of complaint

so shows (R. 4, 6), and so does the evidence. An analysis of appellee's own testimony will show that he brings all of his cars in by fleets averaging 12 cars each and not singly (R. 60, 62, 63). His fleets have caused traffic trouble (R. 47). Used cars are not obtainable for the trade in California and must come from outside the state, hence the $15.00 permit fee would necessarily be passed to and absorbed by the purchasers, and its payment would not destroy appellee's business (R. 63).

Affirmative finding of fact 21 is that the amount of the permit fee is arbitrarily fixed and unreasonable in amount.

There is no evidence in the record to warrant such a finding. The fee is exacted as a charge for the privilege of using the highways and as a police power regulatory fee, and there is nothing to show that it is excessive as either one or both.

Affirmative findings of fact 22 and 26 state that there is "considerable" transportation wholly within the State of California in intrastate commerce of automobiles on their own wheels singly, in twos coupled, and in fleets of several, for the purpose of sale, and that the fee exacted by Chapter 402 discriminates against appellee in favor of such intrastate commerce.

The uncontradicted evidence is that there is no traffic intrastate in California of automobiles on their own wheels for purpose of sale in twos coupled or in fleets, and that there is only an inappreciable or small amount of single car movement

for purpose of sale. Furthermore, there is a very strong inference in the evidence that such limited single car movement for purpose of sale as exists intrastate is confined to cars brought in from without the state and is a succeeding movement of such cars after they have first come to rest in the state (R. 58, 54).

The Evidence

There is substantially no conflict in the evidence. It shows that the movement of motor vehicles on their own wheels from without the state for purpose of sale is conducted in caravans which range from 8 to 50 cars, many of which are joined in tandem with the lead car towing the other, resulting in unusual traffic hazards and difficulties not present in other forms of motor vehicle traffic (R. 47, 56, 57, 52–55).

The condition and caliber of the drivers are such that their driving in itself creates many traffic difficulties. Many of them are casually obtained, by radio or other advertising, for the one trip only. They are fatigued by long driving and are mostly nonresidents unacquainted with and chronically unobservant of local traffic laws. (R. 57, 54.)

The evidence further shows that there is no similar or comparable traffic from point to point within the state in intrastate commerce or from within to without the state; that the intrastate movement of cars on their own wheels for purpose of sale is comparatively limited and "what little there is of it" is the

movement of single cars not in caravans and not in two-car hook-ups and that such cars are driven by regular employees of California dealers (R. 57, 54, 55).

During the year 1934 there were 9663 automobiles moved into California on their own wheels for purpose of sale. From January 1, 1935, to November 29, 1935 (the date of the trial), 14,000 automobiles were so brought into the state (R. 58). Appellee himself during this 11 months of 1935 caravaned approximately 3000 used cars into the state, which he thereafter sold to retail used car dealers. During this same period he purchased only fifty used cars in California. The reason for the bringing of used cars into the state is that dealers can not get used cars in any other way (R. 63).

In the years 1931 and 1932 particularly, caravaning of motor vehicles into the state of California was observed and complained of as a hazard on the highways (R. 52). Previous to 1933 nothing was done about regulating caravaning. In 1933 the California Highway Patrol began to assign men to regulate it and began to regulate it to some extent, such as ordering the drivers to keep a certain distance from one another (R. 56). In the opinion of Chief Cato of the California Highway Patrol, "It was definite last winter (1934–35) that we must do something about caravaning. * * * We found great fleets of cars coming through and at this time there was no caravan law requiring them to travel fifty feet

apart and wrecks were reported. We had numerous complaints from citizens being crowded off the highways." (R. 56, 52.) "There is a serious condition on the road because of caravans, so far as safety is concerned." (R. 55.) The witness, Martland, testified that caravans constitute a very definite traffic hazard, particularly over the Sierra Nevada Mountains. (R. 57.)

Between January 1, 1935, and July 6, 1935 (the date Chapter 402 was enacted; it became effective September 15, 1935), six additional highway patrolmen were employed because there were caravans on the road. This was necessitated by the conditions caused by caravaning prior to the time the Caravan Act was enacted. If the caravaning business were entirely eliminated, these men could be dispensed with (R. 53). Since July 6, 1935, additional men have been appointed to the Highway Patrol, some whose duties are entirely the regulation of caravaning and some to regulate traffic which has been increased by caravaning. The Chief of the Highway Patrol anticipates putting on more men for these purposes (R. 54). The salary of a highway patrolman commences at $170 per month and increases to $225 (R. 59).

There are from eight to fifty cars in a caravan. (R. 47, 51, 56). The average number of cars in appellee's caravans is twelve (R. 62). A caravan composed of more than four cars is a traffic hazard (R. 55, 56). Caravans run train-like; they will not

permit traffic going in the same direction to pass and cause a hazard to those coming from the opposite direction who attempt to pass them (R. 55). A traffic officer testified that he had to stop most of the caravans because the cars are too close together, and then send them on spaced at a safe distance so that other cars could pass without causing wrecks. On one occasion since the Caravan Law became effective, he found a caravan of thirty-four of appellee's cars in which eight of the cars were traveling thirty-five feet apart (R. 47, 48). The drivers of caravan cars do not drive at approximately the maximum speed as do resident drivers. They are unfamiliar with and do not observe the California rules of the road (R. 54).

Many of the cars are towed by other cars. Sixty to seventy per cent of the cars appellee brings into the state are brought in with one car towing another (R. 60). Each caravan is accompanied by a supervisor and a "trouble shooter", each of whom drive a single car (R. 62). When one car tows another they are in some cases tied bumper to bumper. This causes the car in front to make a wide turn. Another way of fastening the cars together is by a tow-bar which is fastened to the rear of one car and the front of the other (R. 48, 61). Highway Patrolman Walsh testified that about forty per cent of the caravan cars he has had to stop has been on account of the towed car whipping and swaying from one side to the other and on many occasions crossing the center line of

the highway. In such cases he stops the cars and makes the operators tear down the tow-bar connection and does not let them start again until they have passed inspection. Some of the tow cars have safety chains and others do not (R. 48). If the two-car hookup is driven fast, in swinging about it creates an additional hazard on the road (R. 48, 54). Caravans pass other vehicles without sufficient clearance between vehicles approaching. They drive in the center of the highways (R. 47, 51, 52, 53).

The lights on cars in caravans are never up to what they should be (R. 47, 51). The tail lights on the towed car are not lighted. Many times caravans must be stopped to make the drivers turn on the rear lights of the towed car (R. 49).

When it is necessary to stop a caravan to require a correction of these conditions, this often results in a complete tie-up of traffic. When the first car stops the rest of the cars go to the right and left on the wrong side of the road in front of oncoming traffic, blocking the highway (R. 47, 48). A specific instance of this was observed in one of appellee's caravans which was stopped because of defective lights and cars traveling too closely together (R. 47, 48).

Issuing citations to caravan drivers, without arresting them, is useless as they do not appear in court because they are nonresidents and have no regular address. Some caravan car drivers have been arrested (R. 48, 51). This requires the highway patrolman to leave his beat.

Some caravans carry passengers. There may be

four or five cars with five people, three in the back seat and one beside the driver. The passengers include women, and children too small to walk (R. 48, 49). Sometimes the driver of a two-car hook-up is so crowded with passengers as to make his driving unsafe (R. 56).

The drivers of caravan cars are mostly nonresidents of the state. The general caliber of the drivers is poor because they are transients picked up from newspaper ads in Detroit, South Bend and other places. The condition of the drivers is generally one of considerable fatigue by the time they reach California because of working long hours (R. 47, 54, 57).

Necessary inspection and regulation of caravans require a large amount of the time of highway patrolmen. On one occasion fifty-seven minutes were spent in one spot on a Saturday night with one of appellee's caravans. After that the patrolman had to take an hour and ten minutes to follow that caravan beyond his congested area to keep the road clear for oncoming traffic, following the caravan twenty to thirty miles (R. 47-51).

All of these conditions are typical of the movement of caravans on the highways. A highway patrolman who testified to all these typical conditions has seen one caravan which was an exception, a caravan of new cars coming from South Bend to San Diego. The cars followed at a safe distance, kept on the right side of the road, had tow-bars with the safety chain, good lights, and good, experienced drivers (R. 49).

In a check made before Chapter 402 was enacted, it was discovered that cars that had been caravaned

across the country were being sold to purchasers as new cars; four or five dealers had altered the bills of sale in 212 cases so that the purchasers had no way of knowing that the cars had been so used (R. 57, 59). This practice is now greatly eliminated by Chapter 402. The border man or traffic officer determines whether it is a caravan car, and a record is kept of every car caravaned into California. This also eliminates to a great degree the bringing into the state of stolen cars. Except for Chapter 402 a car could be driven into the state, its plates destroyed and registration secured as a new car. (R. 59.)

There is no caravaning of cars from within the state to without the state. The movement of cars within the state from place to place for purpose of sale is small, a comparatively limited movement. In the movement from one point to another in the state they do not run the cars together like the caravaning of cars from without the state to within the state. Cars that are moving to more favorable markets, such as from Los Angeles to San Francisco, what little movement there is, are driven singly and usually by employees of the dealers (R. 54, 58).

The administration expense of issuing caravan permits is about $5 for each permit. An increase in clerical help to administer the act is required in the Department of Motor Vehicles, in the border stations, at Sacramento, and in the branch offices (R. 58-59).

Three of the witnesses who testified to the foregoing at the trial also gave the same testimony before the committee of the legislature at a committee hearing on the caravan law before its enactment (R. 55, 56, 59).

Appellee sells the cars he brings in to retail dealers. About 125 to 200 per month, about half the number brought in, are sold outside Los Angeles to dealers in other California cities and at points outside the state such as Seattle and Portland. The dealers come to Los Angeles, buy the cars, and drive them away. Appellee has taken cars to San Francisco which were sold there after arrival. His average net profit on each automobile ranges from $10 to $15, and the money made depends upon the volume of business. He uses two systems in connecting towed cars, one being by tow-bar and the other by safety chains. He has driven a car towing another and has had no difficulty in doing so and has not noticed any particular hazard about it. In his opinion it is possible to drive such a two-car combination in a careful and prudent manner. He does no radio or newspaper advertising for drivers. Part of the drivers are in his employ, some having been so employed for a long time, and a very small percentage are people desiring to come to the coast and who drive for their transportation and possibly meals and gas or oil or other consideration depending on the agreement. There are dealers who make it their business to bring cars through for a flat fee of $7.50 to $15, as agreed

upon. The actual buyer comes through with the caravan, and he handles the funds for the company and hires the drivers, some of whom are his regular drivers. A "trouble shooter" accompanies any caravan of over four or five cars. In caravans the average number of cars is twelve. One driver is assigned to every two cars and the manager and "trouble shooter" each drive single cars. Occasionally relief drivers are carried. He has eight buyers, located through the southern states, who purchase the cars. He has been bringing automobiles into California in this manner for three years, and none of his cars have been in accidents and none of his drivers have been arrested. He has actually caravaned cars into the state and has observed, caravaning into the state, and has observed nothing that causes him to believe there is any hazard in the mere driving of such cars (R. 60-63).

SPECIFICATIONS OF ERRORS

The district court erred in entering its final decree permanently enjoining the defendants (appellants) from enforcing against plaintiff (appellee) the provisions of Chapter 402, Statutes of 1935 of California, and exonerating the bonds given by plaintiff (appellee) under the temporary restraining orders herein; and erred in making and entering its findings of fact and conclusions of law; in the following respects:

1

The district court erred in holding Chapter 402, Statutes of 1935 of California, to be in violation of the Commerce Clause of section 8 of Article One of the Constitution of the United States, because Chapter 402 does not discriminate against, nor impose an unconstitutional burden upon interstate commerce, nor otherwise conflict with the Commerce Clause.

2

The district court erred in holding Chapter 402, Statutes of 1935 of California, to be in violation of the "equal protection of the laws" clause of Section One of the Fourteenth Amendment to the Constitution of the United States, because Chapter 402 does not unconstitutionally discriminate against plaintiff or any other person or deny to plaintiff the equal protection of the laws.

3

The district court erred in holding Chapter 402, Statutes of 1935 of California, to be in violation of the "due process of law" clause of section 1 of the Fourteenth Amendment to the Constitution of the United States, because Chapter 402 does not impose unreasonable requirements upon plaintiff and does not deprive him of property without due process of law.

4

The court erred because on the entire record the plaintiff has failed to sustain the burden of overcoming the presumption of the correctness of the judgment of the legislature that a valid need of legislation existed and that the class defined in Chapter 402 includes the entire class properly the subject of such legislation, and has failed to overcome the presumption that Chapter 402 is reasonable and nondiscriminatory.

5

The court erred in making affirmatively stated findings of fact (22) and (26) to the effect that Chapter 402 discriminates against plaintiff in his operations in interstate commerce in favor of intrastate commerce, because the evidence on the entire record is insufficient to overcome the presumption of the propriety and nondiscriminatory character of the classification made by such act, and because the evidence shows that the class defined in said act is a distinct class constitutionally subject to separate classification, and that there is no other motor vehicle traffic in California in either intrastate or interstate commerce similar or comparable to that conducted by the included class.

6

The court erred in making affirmatively stated findings of fact (8), the last sentence of (9), and

(27), and negatively stated findings of fact (4), (6), (7), and (8), to the effect that there are no unusual or serious safety, traffic or police problems created by the movement of vehicles on their own wheels into California for purpose of sale, because the evidence on the entire record is insufficient to overcome the presumption of the correctness of the judgment of the legislature that such problems existed and merited the enactment of Chapter 402, and because the evidence shows that the class defined in Chapter 402 conducts a specialized form of highway traffic, substantially distinct from other traffic, which creates substantial safety, traffic and police problems differing from those of other traffic.

7

The court erred in making affirmatively stated findings of fact (11) and (19) to the effect that plaintiff's sole occupation is that of dealer in automobiles, and in making negatively stated finding of fact (2) that plaintiff's use of the highways is not an extraordinary use or for direct gain or profit or as a place of business, because the allegations of plaintiff's bill of complaint and the evidence show that the principal element of plaintiff's occupation is that of transporting automobiles upon the highways on their own wheels to market for commercial gain.

8

The court erred in making affirmatively stated finding of fact (20) and negatively stated finding

of fact (1), to the effect that Chapter 402 does not exact a charge for the use of the public highways, because the same are not findings of fact but are conclusions as to the interpretation of the terms of the statute not aided by or based on any evidence; and because such act by its terms shows, and the evidence shows, that the permit fee it requires is exacted, at least in part, as a charge for the use of the public highways for commercial gain.

9

The court erred in making affirmatively stated findings of fact (21) and (22) to the effect that the permit fee required by Chapter 402 is arbitrarily fixed and unreasonable in amount, because such fee is a police power license fee and is a tax for a commercial use of the highways, and the evidence does not show that the amount of the fee is excessive either as a police power license fee, or as a tax for the use of the highways, or as both.

10

The court erred in making affirmatively stated findings of fact (19), (25) and (27) and negatively stated finding of fact (3) to the effect that plaintiff brings cars in singly and not in groups, because the evidence is insufficient to show that plaintiff does so, but does show that the regular and prevailing practice of those within the class defined in Chapter 402 is to move vehicles in fleets and that plaintiff regularly follows the prevailing practice.

11

The court erred in making affirmatively stated findings of fact (15), (16), (17), and (7), to the effect that plaintiff attempted to move three particularly described vehicles into California, one singly and two joined, but not in groups with other vehicles, and that plaintiff's specific complaint in this case is the demand by defendants that plaintiff pay upon such specific vehicles the permit fee required by Chapter 402, because plaintiff's bill of complaint does not allege a practice of moving vehicles singly and not in fleets and does not predicate any special claims of unconstitutionality on the ground that the act applies to singly moved vehicles, but said bill alleges generally that Chapter 402 is entirely invalid and asks that the entire enforcement thereof be enjoined, and does not seek relief with respect to singly moved vehicles or any particular vehicles; and because plaintiff's bill does not claim and the evidence does not show that the vehicles particularly described in said bill were driven singly and not as part of a fleet; and because there is no evidence of the moving by the plaintiff of the vehicles or of any particular vehicle.

12

The court erred in making affirmatively stated findings of fact (19) and (14), to the effect that to require plaintiff to pay the fifteen dollars permit fee for each automobile would absorb his profit and ruin his business and a large part of the used car

business in California, because there is no evidence to support such finding and because the evidence affirmatively shows the condition of the used car market in California to be such that the purchasers would absorb such permit fee cost.

13

The court erred in making affirmatively stated findings of fact (7), (23), (27), and (31) in so far as the same attempt to construe Chapter 402 because, the same are not findings of fact but are argumentative conclusions as to the construction of Chapter 402 based solely upon the terms of the act and not upon evidence; and because the evidence sustains the judgment of the legislature as to the necessity of the legislation and the propriety of the classification.

14

The court erred in making affirmatively stated findings of fact (4) and (6) and negatively stated finding of fact (5), because the same are not findings of fact, but are argumentative legal propositions and are incorrect as such.

SUMMARY OF ARGUMENT

I

A. The limitation of Chapter 402, Statutes of 1935 of California, to the movement of motor vehicles from without the state, does not violate the Commerce Clause or deny equal protection of the

laws, because the class included in the act comprises all those, and only those, who move motor vehicles on the California highways in caravans or fleets. The definition of the class aptly describes those whose practices created the necessity for the legislation, and is the only practical and workable definition; on this see also "B, 2, (1)" below. (Assignments of Error 1, 2, 4, 5, 6, 10, and 11.)

B. That Chapter 402 is not in terms limited to the movement of motor vehicles in caravans or fleets, but includes single cars, does not result in any discrimination against, or burden upon, interstate commerce, or deny equal protection of the laws, for the following reasons: 1. There is no appreciable movement of single cars from without the state. 2. Even though the movement of cars from without the state should include a considerable number of single cars this would not invalidate the classification because: (1) The inclusion of single cars is necessary to make a workable statute and is a permissible margin to insure effective enforcement, and (2) single cars moved alone from without the state are subject to separate classification (Assignments of Error 1, 2, 4, 5. 6, 10 and 11).

II

The permit fee of $15 per car required by Chapter 402 is not excessive or unreasonable; it is a charge for the privilege of using the highways and for the cost of traffic regulation.

A. The fact that the act places the permit fees collected in the state general fund is immaterial. (Assignments of Error 1, 7, 8, 9, 12, 2, 3.)

B. The last sentence of section 6 of Chapter 402, stating that the fees are to reimburse the state for the expense of policing the highways does not prevent the act from being an act imposing a charge for the privilege of using the highways. This sentence has no effect upon the working of the act or the disposition of the fees collected, and can not control the construction of the act, because:

1. This court must ascertain the true nature of the fee by ascertaining the operation and effect of the act. 2. A statute susceptible of two constructions should be given the construction favoring its constitutionality. 3. If this sentence should require a construction making the act unconstitutional it can be severed from the act. (Assignments of Error 1, 7, 8, 9, 12, 2, 3.)

C. The permit fee is not excessive in amount, either as a charge for the privilege of using the highways, or as a policy power regulatory fee. (Assignments of Error 1, 7, 8, 9, 12, 2, 3.)

III

The provision in Chapter 402, that the included class shall be subject to all of the laws relative to transportation for hire by motor vehicle, does not violate the Fourteenth Amendment, either in imposing unconstitutional restrictions upon appellee, or in making him assume the status of common

carrier against his will. (Assignments of Error 3, 4, 5, 6.)

ARGUMENT

I

CHAPTER 402 DOES NOT DISCRIMINATE AGAINST OR BURDEN INTERSTATE COMMERCE, OR DENY EQUAL PROTECTION OF THE LAWS

The questions arising from appellee's claims and the district court's conclusions (R. 7, 8, 44) that Chapter 402 discriminates against interstate commerce contrary to the Commerce Clause (Article 1, section 8, cl. 3), and violates the equal protection of the laws clause of the Fourteenth Amendment of the constitution, will be argued together as they involve the same facts and to a large extent the same principles of law.

The district court held the act discriminates against interstate commerce and denies equal protection of the laws because of the classification made by the first sentence of section 1 as follows:

> "The term 'caravaning' as used in this act shall mean the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser, whether such agent, dealer, manufacturers' representive, purchaser or prospective purchaser may be located within or without this State."

This court in *Morf* vs. *Bingaman*, 298 U. S. 407, sustained a New Mexico statute which separately classified and imposed special license fees upon the movement, in interstate or intrastate commerce upon the public highways, of motor vehicles on their own wheels for purpose of sale, the evidence showing such movement to be by caravans or processions. The effect of that decision is to leave but two principal questions for solution in this division of the argument: Whether the statute here involved discriminates against interstate commerce or denies equal protection of the laws because, (a) it is limited to "transportation from without the state," and (b) it is not confined to the operation of fleets or "true caravans" but includes also single cars moved alone.

These questions are related. The New Mexico statute considered in *Morf* vs. *Bingaman, supra*, was not restricted in terms to caravan movements, but included as well single cars moved alone. Without deciding the effect upon the statute of its inclusion of single cars in the class, this court held it valid as to the party there attacking it (appellee here) because he moved all of his vehicles in caravans. That also is true in the instant case, as we shall later point out herein. And an analogous factual situation is present with respect to the provision of the California law restricting it to the movement of cars from without the state. The facts are (1) that the caravan or fleet movement, classification of which was sustained in *Morf* vs.

Bingaman, supra, is practiced only by those moving automobiles on their own wheels for purpose of sale from without the state, and (2) all of the cars moved on their own wheels from without the state for purpose of sale are moved in caravans. Hence the act by apt description includes all of those, and only those, engaged in moving motor vehicles on the California highways in caravans or fleets. As the class includes all caravaners, the act discriminates against no one. Where an evil exists the class may properly be defined by describing "those from whom the evil mainly is to be feared," *Patsone* vs. *Pennsylvania,* 232 U. S. 138 at 144, although the classification, viewed apart from experience and solely in the terms of the statute, appears illogical, *Patsone* vs. *Pennsylvania, supra; Central Lumber Co.* vs. *South Dakota,* 226 U. S. 157. The class defined in Chapter 402 aptly describes the classification held valid in *Morf* vs. *Bingaman, supra.* We proceed to a fuller discussion of the evidence.

I-A

THE LIMITATION OF CHAPTER 402 TO THE MOVEMENT OF VEHICLES FROM WITHOUT THE STATE DOES NOT CAUSE ANY DISCRIMINATION OR BURDEN INTERSTATE COMMERCE.

The act does not discriminate against interstate commerce or deny equal protection of the laws because there in fact does not exist any class in whose favor it discriminates. This is so because:

(a) The movement of motor vehicles on their own wheels for purpose of sale from without to within the state is conducted by groups or fleets with many attendant evils; (b) there is no movement of motor vehicles on their own wheels for purpose of sale in groups or fleets except from without to within the state, and no other group or fleet movement of any consequence; (c) there is a small amount of movement of motor vehicles on their own wheels for purpose of sale intrastate in California, but such movement is by single vehicles alone and not in fleets, and without the evils present in the movement from without the state, and such vehicles are subject to other license and tax requirements: (d) the definition of the class made by the act was adopted by the legislature as the description of a well-defined class and such definition includes all of those who move vehicles on their own wheels in fleets or groups; the definition describes those whose practices create the special difficulties of the fleet movement, and does not include any others.

Before proceeding with the argument it should be noted that the burden was on appellee to show that Chapter 402 discriminates against interstate commerce and denies equal protection of the laws by alleging and proving facts showing actual discrimination. *Such allegations and proof are necessary even where an act by its terms show possibilities of unconstitutional discrimination. Interstate Busses Corp.* vs. *Blodgett,* 276 U. S. 245; *Gregg Dyeing Co.* vs. *Query,* 286 U. S. 472; *Pull-*

man Co. vs. *Knott*, 235 U. S. 23; *St. Louis, I. M. & S. R. Co.* vs. *Arkansas*, 240 U. S. 518; *Williams* vs. *Baltimore*, 289 U. S. 36; *Kookee Consol Coke Co.* vs. *Taylor*, 234 U. S. 224; *Lindsley* vs. *Natural Carbonic Gas Co.*, 220 U. S. 61; *San Luis Obispo County* vs. *Murphy*, 162 Cal. 588.

But the allegations of appellee's bill of complaint charging discrimination (R. 7–8) are no more than the barest of legal conclusions; they allege no facts upon which to base charges of discrimination against interstate commerce and denial of equal protection of the laws (compare *Missouri Pacific R. Co.* vs. *Norwood*, 283 U. S. 249); and appellee offered no proof whatsoever of any actual discrimination.

Nevertheless, appellants introduced evidence to show that no discrimination in fact is made by the act. And although after such evidence was introduced appellee himself became a witness in his own behalf, he did not either in his own testimony or by other evidence contradict or explain appellants' evidence on this point.

To show that no discrimination is made we first review briefly the evidence as to the practices prevailing in the movement of cars from without the state for purpose of sale. Such cars are moved in caravans ranging from eight to fifty cars, the average in appellee's caravans being twelve (R. 47, 51, 56, 62). (Appellee's claim that he moves 30 to 40 per cent of his cars alone and not in

caravans will be considered later and be shown by appellee's own testimony to be without foundation.) A caravan of more than four cars is a highway hazard (R. 55, 56). Many of the cars in caravans are joined in two-car hookups with the driver in the front car; 60 to 70 per cent of appellee's cars are moved in such two-car hookups (R. 48, 49, 60). The rear car has a tendency to skid and to swing out of its traffic lane. The tail light on the rear car is not lighted, obviously to save exhausting the battery as the towed car is not in gear. The cars are driven so closely together as to prevent other vehicles going around them or to make passing hazardous (R. 47–49, 51, 53). Caravans are driven at varying rates of speed differing from the speed of other traffic (R. 54). The drivers are mostly nonresidents unacquainted with and unobservant of California traffic laws, and many of them are casually procured by radio and other advertising for the purpose of the trip only (R. 54, 59). The conditions of hazard and law violations attending caravan movement are the rule and a caravan that is operated otherwise is a very noticeable exception (R. 49). These conditions caused wrecks and general complaints and necessitated additional traffic officers before Chapter 402 was enacted (R. 52, 55), and such conditions led to its enactment (R. 55, 59).

All this is conceded, though minimized, in the district court's opinion (R. 77), and in the ninth

affirmative finding of fact (R. 38), although in the latter it is qualified by stating, contrary to specific evidence on the precise point, that these difficulties are the exception rather than the rule. The evidence expressly is that these hazards and law violations are the rule and not the exception (R. 49). A review of the testimony will show that the district court was not justified in minimizing the effect of this evidence.

It was held expressly in *Morf* vs. *Bingaman, supra,* that traffic of this kind may be separately classified. See also *Continental Baking Co.* vs. *Woodring,* 286 U. S. 352 at 373. The dissenting opinion plainly took the correct view (R. 93–94).

Such traffic and practices exist on the California highways only among those who move automobiles on their own wheels from without the state for purpose of sale. It was the actual practice of those defined in the class that prompted the statute. There is no such traffic either in intrastate commerce or other interstate commerce in the state. As to this the evidence is clear and uncontradicted, shown by the testimony of several witnesses, including appellee. R. W. Martland, Jr., editor of an automobile trade paper published at San Francisco, who for more than two years personally investigated the caravanning of automobiles into California, testified:

> "In the caravaning from one point to another point in the state they do not run the cars to-

gether like the caravaning of cars from without the state to within the state. Cars that are moving to more favorable markets, such as from Los Angeles to San Francisco, what little movement there is, are driven singly and usually by employees of the dealers. I can't say I have ever seen a convoy of cars moving intrastate. I don't say it doesn't exist, but I have never seen it. So far as I know they would drive them one at a time and not in a train of cars." (R. 58.)

It is apparent that the witness used the term "caravaning" in the generic sense of the movement of motor vehicles on their own wheels for purpose of sale, as it is much used in the evidence and indeed in the act itself as meaning the movement of one or more vehicles regardless of whether in fleets or not.

That evidence is not contradicted. Although appellee thereafter testified, he did not question this statement and offered no evidence to the contrary; rather, his own testimony directly supports it.

Mr. Martland further testified:

"Most of the caravans originate in Detroit, South Bend, and Kenosha, Wisconsin. I have followed them through Utah, Nevada, and into California, and in California." (R. 56.)

Appellee testified as to the cars purchased by him in 1935:

"Out of 3000 cars bought this year, probably fifty were purchased in California. The original idea in organizing in those states is that used cars can not be purchased in California to any

great extent. *The reason for my business is that dealers demand used cars and they come to me to get them because I have available cars, and they cannot get them in any other way.* If the used car industry is to exist they must get used cars from without the State of California." (R. 63.)

Obviously, if used cars can not be obtained for the trade in California, or are obtainable only in the ratio of 50 to 3000, there is no appreciable movement intrastate in California of used cars on their own wheels for purpose of sale. And clearly, and precisely as Martland testified, such an inappreciable volume in the course of eleven months or a year would not be collected into fleet or caravan movements but would be single movements.

In his recross-examination of the witness Martland on this point, appellee did not attempt to discredit this testimony, but apparently only tried to create the inference that appellee moves some of his cars from Los Angeles to San Francisco (R. 58). In his own testimony appellee indicates that after his cars arrive in Los Angeles he sells some to dealers in other California cities and in Seattle and Portland, and that such cars are moved to their new destinations on their own wheels, without specifying whether they are in fleets or singles (R. 61). It would appear that by the foregoing appellee is attempting to show a substantial volume of intrastate movement of cars on their own wheels for purpose of sale, in order to lay a factual basis for his charge

of discrimination. But the showing of such facts only attests more plainly the propriety of the classification.

If the act required a permit for an intrastate movement, such vehicles, after coming to rest in Los Angeles, would require another permit for the succeeding movement, intrastate or interstate. As it is, the original permit suffices for such movement for a period of ninety days (Sec. 4). A permit is required for a car brought into the state for purpose of sale. After such car comes in, any later movements for purpose of sale can be made under such permit or under the regular registration license, and without a second imposition of the caravan law fee.

The only showing of intrastate movement or of movement from within to without the state is that of cars brought in under the caravan law permits. Properly, the act does not impose an additional license fee for the succeeding movements of such cars.

Continuing with other witnesses on this point, the testimony of the Chief of the California Highway Patrol, E. Raymond Cato, shows that the movement of motor vehicles by caravans on the California highways originates outside the state. Such traffic commences at the border where the caravans come in. Thus in January or February, 1935, six months before the law was enacted and nine months before it became effective (hence before there was any watching at the border to collect license fees from incoming

cars), the six additional highway patrolmen specifically assigned to regulating caravans were stationed at the border counties of Imperial, Riverside, and San Bernardino (where enter the highways leading into southern California), and in the border counties of Nevada and Placer (where enter the highways into the central part of the state) (R. 52). The reason for the appointment and stationing of the officers at these points was because

> "* * * we found great fleets of cars coming through and at this time there was no caravan law requiring them to travel fifty feet apart and wrecks were reported. We had numerous complaints from citizens being crowded off the highways." (R. 52.)

The same witness testified as to conditions long before the act was passed, and which eventually led to its passage, showing the fleet problem to be the movements of cars from without the state:

> "In the years 1931 and 1932 particularly, caravaning of motor vehicles into the state was called to my attention by complaints from citizens. Committees of citizens called on me in Sacramento and insisted that we stop caravaning. We could find no law to stop it, so we made a check-up to see what caravaning was, as I was unfamiliar with it at that time. We found fleets of automobiles being towed into the state. Citizens complained that they were a hazard on the highways and were dropping itinerants into the State of California. The matter was brought before the last session of the legislature, and I appeared and

testified before a committee of the legislature." (R. 52.)

And he further testified:

> "The drivers of caravan cars do not drive at approximately the maximum speed as resident drivers, I cannot say why. They are unfamiliar with California rules of the road, at least not observing in some instances and the fact that they drive too closely together, and towing another car, creates an additional hazard. If they drive fast in swinging about it creates an additional hazard on the road. These were some of the conditions which led to the assignment of additional men, and I anticipate putting on more men. None of the six additional men we put on were because of the Caravan Act, but the six men were necessitated by the condition itself prior to the enactment of the Legislature. Since then we have put on additional men to try to enforce the act." (R. 53-54.)

In his testimony with reference to the intrastate movement of vehicles on their own wheels for purpose of sale, it is apparent that the witness used the term "caravaning," like Martland, in the sense of the movement of cars on their own wheels for purpose of sale without reference to whether in fleet or singly. Thus he said:

> "There is no caravaning of cars from within the State to without the State to my knowledge. There is transportation of cars where they haul them, and there is some caravaning of cars within the state from place to place but it is small.

I have seen a few new cars moved from place to place." (R. 54.)

This, with his other testimony, shows that in stating "there is some caravaning of cars within the state from place to place but it is small," he referred to the movement of single nonfleet cars.

In view of this testimony, and in view of the absolute lack of any evidence to support its finding, the District Court's 26th affirmative finding of fact that "there is considerable transportation wholly within the state in intrastate commerce of automobiles on their own wheels, singly, in twos coupled, and in fleets of several for the purpose of sale" (R. 41), and the statement in its opinion to the same effect (R. 81), are utterly without foundation. The dissenting opinion correctly states the evidence (R. 95).

It is submitted that the classification here made is between those who make a highly distinctive, unusual and burdensome use of the highways and those who do not make such use. The class is defined by the practical and logical means of describing those who make such use. The classification is not between those engaged in interstate and those carrying on intrastate commerce; in the words of this court in *Bradley* vs. *Public Utilities Commission*, 289 U. S. 92 at 95, the effect of the statute upon interstate commerce is "merely an incident." See the dissenting opinion (R. 93–95).

Classifications of the kind in this case are well recognized in the decisions of this court. Thus in

Continental Baking Co. vs. *Woodring,* 286 U. S. 352, there was involved a classification for purpose of taxation and regulation of those who (like appellee) were "engaged in the transportation by motor vehicle of property sold or to be sold by him in furtherance of any private commercial enterprise." (286 U. S. at 357, note 1-(d)). The act was attacked as violative of the commerce clause and equal protection clause on the ground, among others, that it exempted from the classification "the transportation of live stock and farm products to market by the owner thereof or supplies for his own use in his own motor vehicle." (286 U. S. at 371.) It should be kept in mind that Continental Baking Co. was engaged in interstate commerce, transporting its own property to market in its own vehicles. The exemption favored those doing precisely the same thing, many of them obviously engaged solely in intrastate commerce. This court recognized, however, that the true basis of the classification was not between those engaged in interstate and those engaged in intrastate commerce, but was, as is true in the instant case, between those conducting habitually a burdensome motor vehicle traffic and those making a comparatively slight use of the highways. On this the court said (286 U. S. at 373):

> "The (District) Court found a practical difference between the case of appellants 'who operate fleets of trucks in the conduct of their business and who use the highways daily in the delivery of their products to customers' and that

of 'a farmer who hauls his wheat or livestock to town once or twice a year'. *The legislature in making its classification was entitled to consider frequency and character of use and to adapt its regulations to the classes of operations, which by reason of their habitual and constant use of the highways brought about the conditions making regulation imperative and created the necessity, for the imposition of a tax for maintenance and construction.* As the court said in *Alward* v. *Johnson,* 282 U. S. 509, 513, 514: 'The distinction between property employed in conducting a business which requires constant and unusual use of the highways, and property not so employed, is plain enough.' See also *Bekins Van Lines* v. *Riley,* 280 U. S. 80, 82; *Carley & Hamilton* v. *Snook,* 281 U. S. 66, 73." (Italics added)

The same principle is voiced in *St. Louis, I. M. & S. R. Co.* vs. *Arkansas,* 240 U. S. 518. The statute prescribed a minimum switching crew when switching across public crossings in cities but exempted companies operating railroads less than 100 miles in length. Against the claim of violation of the Fourteenth Amendment and the commerce clause, this court said:

"A more serious objection is that certain terminal companies, one at the city of Helena and one at Fort Smith, do switching for certain connecting trunk lines, and yet, by reason of their length being less than 100 miles, are not covered by the act. Indeed, it is said that one of them, that at Fort Smith, does switching over some of the same crossings that plaintiff in error does.

> The distinction seems arbitrary if we regard only the letter, but there may have been considerations which determined it, and the record does not show the contrary. We have recognized the impossibility of legislation being all-comprehensive, and that there may be practical groupings of objects which will as a whole fairly present a class of itself, although there may be exceptions in which the evil aimed at is not deemed so flagrant."

In that case, again, there was a classification, superficially, as here, between interstate and intrastate commerce, between the interstate railroad and the intrastate terminal. But the court recognized such was not the real basis of the classification but was only an incident of it, and that the true ground of the classification, as here, lay elsewhere.

In *Sproles* vs. *Binford,* 286 U. S. 374, there were motor vehicle length and load limitations, with exemption to vehicles operated "between points of origin, or destination, and 'common carrier receiving or loading,' or unloading points." (286 U. S. at 393.) The exemption was sustained because relating to shorter hauls than made by the included class and because "those who come within the exception transport under distinctly different circumstances from other persons using the highways." (P. 394.)

Now this again was a classification between interstate and intrastate commerce; the general limitations applied to vehicles employed in interstate

operations (pp. 389-390), while the exception necessarily was confined to traffic conducted within the areas defined, most of which areas, perhaps all, necessarily would lie entirely within the boundaries of the state (pp. 394-395). But this court recognized that the classification was not actually between interstate and intrastate commerce, that the effect on interstate commerce was "merely an incident" (289 U. S. at p. 95), and that the justifiable basis of the classification was the difference between two forms of vehicular traffic.

In *Hicklin* vs. *Coney*, 290 U. S. 169, and in *Aero Mayflower Transit Co.* vs. *Georgia Public Service Commission*, 295 U. S. 285, this court again upheld state statutes making classifications superficially between interstate and intrastate commerce, but actually, as in the instant case, between substantially different ways of conducting motor vehicle operations.

In *Railroad Co.* vs. *Husen*, 95 U. S. 465, it is stated in substance and effect that if the act is one of regulation and not of prohibition, and the regulation is one of vital necessity, promotive of domestic order, morals, health and safety, it is valid under the police power of the state even though it directly affects interstate commerce, if the right to regulate is not carried beyond the scope of that necessity.

In *New Mexico, ex rel. McLean* vs. *Denver & Rio Grande R. R. Co.*, 203 U. S. 38, a New Mexico statute was considered which required inspection of

all hides being transported out of the state and charged an inspection fee therefor, but did not impose such demands upon hides remaining in the state. Against the claim that the act discriminated against interstate commerce, this court pointed out that the purpose of the law was to combat the stealing of cattle by positively insuring an inspection of brands on hides being shipped out of the state and thus being taken beyond the state's jurisdiction, a precaution not so necessary as to hides remaining in the state. The court's reasoning in that case is plainly applicable to the present case, and the court made a statement altogether in point here (at page 54):

> "But legislation is not void because it meets the exigencies of a particular situation."

A classification somewhat similar to the one upheld in the last mentioned case was sustained in *Turner* vs. *Maryland,* 107 U. S. 38, though the *Turner* case is weaker than the preceding one.

As this court said in *Miller* vs. *Wilson,* 236 U. S. 373:

> "Dealing with practical exigencies, the legislature may be guided by experience."

In *Pullman Co.* vs. *Knott,* 235 U. S. 23, a gross receipts tax was involved, as to which the court said:

> "It is suggested that there is an arbitrary classification because the tax is confined to sleeping and parlor car companies, and does not fall upon railroads operating their own sleeping

and parlor cars. If otherwise this were a valid objection, as to which we need express no opinion, it is enough to say that a tax is not to be upset upon hypothetical and unreal possibilities, if it would be good upon the facts as they are. *Keokee Consl. Coke Co.* v. *Taylor,* 234 U. S. 224. It does not appear that any railroad in Florida does operate its own sleeping or parlor cars, and the attorney general of the state denies that such a case exists."

I-B

THAT CHAPTER 402 IS NOT IN TERMS LIMITED TO THE MOVEMENT OF FLEETS OR CARAVANS BUT INCLUDES SINGLE CARS DOES NOT RESULT IN ANY DISCRIMINATION, OR BURDEN INTERSTATE COMMERCE

1. There is no appreciable movement of single cars from without the state.

Appellee claims that thirty to forty per cent of the cars he brings in come in singly and without regard to any other cars coming in, and hence, not being part of a caravan or two-car hook-up movement, can not properly be included within the class, and that to include them discriminates against him in favor of the movement of single cars not for sale into California and such single car movement as there is for purpose of sale intrastate in California.

To this there are several answers. Before proceeding with them, however, appellee's evidence as to his movement of single cars should be analyzed.

Upon analysis it will be found that no such single car, noncaravan movement exists as to appellee's cars, that sixty to seventy per cent of appellee's cars are brought in with one car towing another, and in caravans, and that the remaining thirty to forty per cent are necessarily divided among the caravans as single, nontowing cars driven as part of the caravan by the caravan manager, by the caravan mechanic or "trouble shooter," and by other single car drivers. Appellee testified (italics are supplied):

> "In the operation of my business, approximately thirty to forty per cent of the automobiles are driven into the state of California alone, as a single unit, with one driver driving an automobile, *and the balance are brought into this state with one automobile towing another.* (R. 60.)
>
> "When I speak of bringing cars in, and thirty or forty per cent being single cars without having a car attached thereto, I mean that such car comes through alone, without regard to any other cars coming into California." (R. 60.)
>
> "In every instance, the actual buyer, who handles the funds for the company, hires his drivers, and has his regular drivers, comes through with the caravan of automobiles. We also have a 'trouble shooter' with these cars, who looks after the mechanical condition of the cars." (R. 62.)
>
> "In caravans, the average number of cars is twelve, to which are assigned one 'trouble

shooter', and one man to every two cars. *The trouble shooter and the buyer or manager in charge of these caravans always drive single cars.*" (R. 62.)

"The average number of cars in a caravan is about twelve, and the number of drivers varies. All are in charge of the caravan manager and actual buyer. *Their instructions are to have a driver for every single unit coming through and one driver for every hook-up.* Occasionally relief drivers are brought through. The supervisors drive a single unit." (R. 63.)

It thus appears clearly and definitely that sixty to seventy per cent of the cars appellee brings in are in two-car hook-ups with one driver driving the two cars. (In *Morf* vs. *Bingaman, supra,* it was appellee's evidence that seventy-five to eighty per cent of his cars were moved in two-car hook-ups.) It further appears clearly and definitely that in every caravan, which averages about twelve cars, at least two of such cars are driven singly and not in tandem *but in the caravan,* they being the cars driven by the buyer and the trouble shooter. It further appears, from the last italicized portion above, that there are other single units in a caravan in addition to those driven by the buyer and the trouble shooter. The testimony of Highway Patrolman Walsh shows that in the caravans there are a considerable number of single cars not joined in hook-ups (R. 49).

Plainly then, thirty to forty per cent of the automobiles appellee brings in *do not* "come through

alone, without regard to any other cars coming into California." Such thirty to forty per cent are scattered among the cars driven by the buyer and by the trouble shooter and the other single units in the caravans, but all accompanying and part of the caravans.

This is evident from the application of simple arithmetic. The average number of cars in a caravan is twelve, and appellee brought in approximately three thousand cars in the first eleven months in 1935. This approximates two hundred and fifty caravans. The two cars driven singly in each caravan, one by the buyer and one by the trouble shooter, would thus account for five hundred single cars or sixteen and two-thirds per cent of the three thousand cars. As above shown the buyer and the trouble shooter are instructed to have a driver for each single unit in a caravan as well as a driver for each hook-up. If there is one single unit in a caravan in addition to the buyer and the trouble shooter that accounts for twenty-five per cent of the three thousand cars, and if two such additional single units thirty-three and one-third per cent.

It is submitted that the foregoing accounts for the thirty to forty per cent of the cars driven into the state as single units by appellee. Sixty to seventy per cent are driven in two-car hook-ups, and in caravans averaging twelve cars each, and the thirty to forty per cent of single cars are largely

scattered among the caravans. This is inescapable from appellee's own testimony.

2. Even though the movement of cars from without the state should include a considerable number of single cars, this would not invalidate the classification.

The evidence is that cars coming into the state for purpose of sale are in caravans, with all the evils attendant on such movement. There is no evidence of any appreciable movement of single cars not in caravan from without the state except the reference thereto in appellee's testimony. And appellee's testimony, as above shown, when considered in its entirety, shows no appreciable amount of single car noncaravan movement, if any.

However, if there were a considerable number of cars moved singly and alone from without the state for purposes of sale, that would not necessarily invalidate the classification. This is so for several reasons.

(1) The first reason goes to the causes and motives for the practice of moving automobiles in caravans. This practice is not mere happenstance; it originated as the most practicable method of moving large numbers of motor vehicles long distances on their own wheels. So the practice of bringing automobiles into California for purpose of sale gave rise to the practice of moving them in caravans in which many of the cars are in tandem hook-ups. (See statement to like effect in *Morf* vs. *Bingaman, supra.*) Appellee conducts his busi-

ness in that way, as do all others similarly engaged. The evidence shows the advantage of that method of conducting the business. If vehicles are to be driven across several states by drivers variously, often casually procured, it is obviously advantageous to have such vehicles accompanied by and in charge of a manager and a "trouble shooter" or mechanic. Particularly is this true of used vehicles whose past history and present fitness are unknown and which are about to be intrusted, on many if not most occasions, to a driver of similar attributes. Sending such a car and driver on a thousand or two thousand mile trip entirely alone is plainly not good business. So the cars are dispatched in caravans of a size which makes it economically sound to have them in charge of a manager and a mechanic to see that they promptly and safely arrive at destination.

It was this practice that produced the evils and difficulties shown in the evidence and which induced the enactment of the Caravan Law. The legislature was confronted with a practical problem, one part of which was the description of the class. As it was the practice of bringing cars into the state from without the state on their own wheels for purpose of sale which gave rise to the practice of caravaning and its attendant evils, so the legislature described the class in the terms of the practice which created the evils and induced the law.

The district court thought the classification bad and inferred the class might have been more aptly described (R. 79–80). Due consideration of the problem facing the legislature, however, furnishes convincing proof that the definition made in Chapter 402 accurately circumscribes the class and is the only workable one. The difficulties which the legislature and enforcing officials would have encountered had the legislature attempted to define the class as those who moved vehicles in caravans (as the district court apparently thought it should have done, R. 79–80), are evident. The enforcing officers would have been confronted with the easy evasion of stringing caravans out with a mile or so between cars upon approaching the border station and entering the state, and then closing up into standard caravan formation after getting into the state and out of sight of the border station. True, traffic officers in the interior of the state would have caught some of the evaders, but many would escape. The difficulties are obvious.

The question of the constitutionality of a classification so described also would arise. The difficulty would not be the classification between caravan and noncaravan movement, but rather the vagueness and workability of the classification. That is, when is a caravan not a caravan: what distance, or lack of distance, between cars determines whether they are in caravan, and how many cars how close together make a caravan? That

again suggests insurmountable difficulties of law drafting, and of action and interpretation facing enforcement officials. If a caravan were defined in terms of distance between cars, how easy it would be, accordion-like, to expand and contract in length according to the proximity of enforcing stations and officers. (See Dissenting opinion, R. 93-95.)

Clearly the definition of the class used by the legislature was the logical and workable one. If a common practice creates well defined difficulties which call for legislative action, what better way to define the class than to include those following such practice and none others? *Central Lumber Co.* vs. *South Dakota,* 226 U. S. 157; *Patsone* vs. *Pennsylvania,* 232 U. S. 138.

Now as those engaged in the practice must be classified in terms of the practice because of the necessity of drafting a workable statute, they can not complain because the class sometimes includes variations or departures by them from the particular practice at which the statute is aimed, where such variations and departures are so closely related to the practice as to be within the definition of the class, or are, in truth, an integral part of the practice. It is well settled that a legislature faced with the practical problem of defining the boundaries of a classification may include reasonable margins to avoid vagueness and insure workableness and effective enforcement.

Applicable here is the doctrine, invoked in varied situations, of *Purity Extract & Tonic Co.* vs. *Lynch,*

226 U. S. 192. A law forbidding the sale of intoxicating liquors also forbade the sale of nonalcoholic malt liquors. It was held that the inclusion of the nonintoxicating malt liquors in the prohibition was sustainable as a means of preventing evasions of a law actually aimed at intoxicants. On the question this court made an oft repeated statement (at page 201):

> "It does not follow that because a transaction, separately considered, is innocuous, it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the government. * * * The statute establishes its own category. The question in this Court is whether the legislature had power to establish it. The existence of this power, as the authorities we have cited abundantly demonstrate, is not to be denied simply because some innocent articles or transactions may be found within the proscribed class."

Likewise in *Euclid* vs. *Ambler Realty Co.*, 272 U. S. 365, this court said (at page 388):

> "Here, however, the exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive or dangerous will share the same fate. But this is no more than happens in respect of many practice-forbidding laws which this Court has upheld, although drawn in general terms so as to include indi-

vidual cases which may turn out to be innocuous in themselves (citing cases). *The inclusion of a reasonable margin to insure effective enforcement will not put upon a law, otherwise valid, the stamp of invalidity.* Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation." (Italics supplied).

Equally in point on other aspects of the rule above stated are *New York* vs. *Hesterberg*, 211 U. S. 31; *Hebe Co.* vs. *Shaw*, 248 U. S. 297; *Pierce Oil Corp.* vs. *Hope*, 248 U. S. 498.

Applicable here also is the rule that a classification having some reasonable basis is not invalid "because in practice it results in some inequality", *Lindsley* vs. *Natural Carbonic Gas Co.*, 220 U. S. 61 at 78, or "even though it bear hard in some particular case," *Bain Peanut Co.* vs. *Pinson*, 282 U. S. 499 at 501.

(2) Another reason is that single cars moved alone on their own wheels for purpose of sale would be properly subject to classification. Such cars are driven for the purpose of direct commercial gain and profit. They are in a class apart from the great host of automobiles operated by their owners for private purposes.

In *Hodge Drive-It-Yourself Co.* vs. *Cincinnati*, 284 U. S. 335, it was held that single cars rented to drivers could be subjected to license fee and safety

requirements more onerous than those imposed upon private automobiles driven by their owners. There are many points of similarity between the automobile operations classified in the *Hodge* case and the movement of single cars not in caravan from without the state for purpose of sale. These are more particularly disclosed by a reading of the opinion of the Supreme Court of Ohio (123 Ohio St. 284, 175 N. E. 196), affirmed by this court in the *Hodge* case. Some of the grounds noted by the Ohio court for sustaining that classification are similar to the reasons expressed by this court for sustaining the New Mexico caravan law in *Morf* vs. *Bingaman, supra.* One element sustaining the classifications mentioned by both courts is that the drivers are not owners of the cars and are casually procured, hence having less sense of responsibility for safety than owner-drivers. Another is that in both cases the owners of the cars are using the highways for direct commercial gain, as a place to conduct a private business differing radically from ordinary uses and subjecting the ordinary users to unusual hazards.

In *Continental Baking Co.* vs. *Woodring,* 286 U. S. 352, it was held that one transporting his own property (bakery goods) over the public highways in his own motor vehicles, in interstate commerce, for sale to customers, could be classified separately for taxation and regulation from others carrying their own property for sale in their own motor vehicles, in intrastate or interstate commerce, because of an

unusually burdensome use of the highways. There is great similarity between that and the instant case. It is not a material difference that in the instant case the motor vehicle driven is itself both the article of commerce and the conveyance. In each case the material element is that the owner of the vehicle is using it to transport his property for purpose of sale and is making a continuous and burdensome use of the highways, even where the vehicles are moved singly and not in fleets.

At this point appellee may urge that the foregoing does not take into account that cars moved singly intrastate for purpose of sale are not subject to Chapter 402. Several answers to this have already been given: (1) the class defined in the statute, and appellee in particular, move their vehicles in caravans, hence can not complain that single cars moved intrastate are not in the class (*Morf* vs. *Bingaman*, 298 U. S. 407); (2) assuming *arguendo* some single cars not in caravan may be moved by the included class, this is incidental to the caravan movement and is a permissible and necessary margin for accuracy in definition of the class and workableness of the statute; (3) there can not be any appreciable volume of used cars moved intrastate for purpose of sale as appellee's testimony indicates that used cars are obtainable in the state for sale, in proportion to used cars brought from without the state, in the ratio of 50 to 3,000 (R. 63), and appellee brought in three-fourteenths of the total number of

cars moved into California on their own wheels for purpose of sale in 1935 (R. 58); (4) the only evidence in the record as to the source of any cars moving intrastate on their own wheels for purpose of sale is that such cars originally, and shortly prior to their intrastate movement, were brought in from without the state (R. 61); (see the dissenting opinion, R. 95) that is, there is no identification in the record of any indigenous intrastate movement.

However, a further defense of the classification between single cars not in caravan moved from without the state for purpose of sale, assuming such movement exists in appreciable volume, and single cars moved intrastate for purpose of sale, also assuming an appreciable volume of such movement, is that the latter, though exempt from the $15 permit fee, (a) compose a substantially different type of traffic than the movement from without the state, and (b) pay other and different license fees, hereinafter enumerated.

It should be kept in mind that single cars moved from without the state for purpose of sale obviously travel from the eastern border of the state to the coast cities where the markets are situated (R. 4, 60). This may involve a distance of 280 miles from Yuma, Arizona, to Los Angeles; a distance of 475 miles from the California line near Reno, Nevada, to Los Angeles; a distance of 235 miles from the California line near Reno to San Francisco; a distance a 670 miles from Yuma to San Francisco; etc. After com-

ing to rest in Los Angeles about one-half of the appellee's cars go farther; some of them are taken by appellee to San Francisco, 400 to 470 miles from Los Angeles; and some to states north of California, thus travelling from Los Angeles to the northern boundary of California, a distance of 950 miles (R. 61).

There is nothing in the record indicating the distances of the movement of cars intrastate on their own wheels for purpose of sale, except as to cars originally brought in from without the state.

The class of drivers operating cars brought in from without the state for purpose of sale is such as to make the operation of such cars on the highways distinctly more of a hazard and problem than the operation of the purely intrastate traffic (R. 53, 54, 57, 58). The fraudulent registration and stolen car hazards are present in the single car traffic from without the state equally with the caravan movement (R. 57, 59).

Such being the record, it may well be, and there is no showing to the contrary, that the license fees required for the movement of single cars intrastate on their own wheels for purpose of sale on which the $15 permit fee is not required by Chapter 402, are such as to equalize the position of the class to which they apply with the position of the single, noncaravan vehicles subject to Chapter 402, under the rule of *Interstate Busses Corporation* vs. *Blodgett*, 276 U. S. 245. And see *Gregg Dyeing Company*

vs. *Query*, 286 U. S. 472; *General American Tank Car Corporation* vs. *Day*, 270 U. S. 367; *Travelers Insurance Company* vs. *Connecticut*, 185 U. S. 364.

Thus those operating motor vehicles on their own wheels for purpose of sale other than under the permit provided by Chapter 402 must pay the following described fees, which of course can not be required of operators moving vehicles under the permit issued pursuant to Chapter 402. Vehicles moved intrastate and commencing their journey originally intrastate have already been registered and the $3 fee paid under Section 370 of the California Vehicle Code (Appendix B). The license fee required by Chapter 362, Statutes of 1935, of California, also has been paid (Appendix C). Those are the basic license fees paid by owners of motor vehicles registered in the state.

Appellee testified to the effect that in his opinion, based on his experience, there is no danger in two-car hook-ups, and that he had had no accidents and none of his drivers ever had been arrested in his caravanning operations (R. 62). A traffic officer testified, however, to one specific instance in which one of appellee's caravans consisting of thirty-four cars required supervision by reason of driving too closely together, defective lights, and blocking the highway (R. 47, 48). The hazards and evils caused by the caravanning practice in general have been heretofore shown. Appellee's contention that he conducts his business in such a way as to cause no

highway difficulties is easily answered. In the first place the fee is charged for the use of the highways in the operation of what is essentially a transportation business. And in the second place, as far as regulation is concerned, appellee's position is met by the fact that he carries on a business the general practice of which results in unusual highway traffic conditions requiring special regulation and justifying the exaction of a fee for such regulation and for a commercial use of the highways.

Appellee's complaint is answered by *Murphy* vs. *California,* 225 U. S. 623, and kindred cases. A municipal ordinance forbade the keeping of public billiard or pool halls, but permitted a hotel with twenty-five or more bedrooms to maintain billiard tables for the use of regular guests only. Murphy claimed, among other things, that his pool hall was free from all evil and hence no more to be suppressed than any other orderly business. On this contention this court said (at page 629):

> "* * * where, in the exercise of the police power, the municipal authorities determine that the keeping of such resorts should be prohibited, the courts cannot go behind their findings and inquire into local conditions; or whether the defendant's hall was an orderly establishment, *or had been conducted in such manner as to produce the evils sought to be prevented by the ordinance.*" (Italics supplied.)

II

THE PERMIT FEE OF $15 PER CAR REQUIRED BY CHAPTER 402 IS NOT EXCESSIVE OR UNREASONABLE; IT IS A CHARGE FOR THE PRIVILEGE OF USING THE PUBLIC HIGHWAYS FOR A DISTINCTIVE COMMERCIAL USE AND IS A POLICE POWER LICENSE FEE, AND ITS EXACTION DOES NOT VIOLATE THE 14TH AMENDMENT OR THE COMMERCE CLAUSE

A. The district court found as a fact that the $15 permit fee is excessive and unreasonable (affirmative findings of fact 20 to 23 R. 40-41). Examination of such findings and of the court's opinion (R. 82-84) shows plainly that the court reached its conclusions on this point because it entertained an erroneous conception of the law. We wish to state that even if the court's theory of the law had been the correct one, nevertheless there is no evidence to support its findings of fact, and we shall later show this more fully as we proceed with the argument, but at this immediate point we desire to demonstrate the error of law into which the district court fell and show that the application of correct legal principles establishes that the fee is not excessive and is reasonable.

The district court erroneously thought the fee (1) is exacted only as a police power license charge for regulation of the licensed traffic and that its reasonableness must be measured solely by the cost of such regulation, and (2), correlative with (1),

that the fee can not be justified as a charge for the privilege of using the state's highways. It apparently thought these conclusions were required by reason of the terms of Chapter 402, particularly section 6 thereof, which is:

> "All fees from the issuance of permits collected by the Motor Vehicle Department under this act shall be paid into the general fund in the State treasury.
>
> "Said department shall file with the Controller on or before February first and August first of each year a detailed account of the receipts of said Department from this source for the six months next preceding. The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted, so as to provide for the safety of traffic on such highways where caravaning is being conducted."

The theory upon which the court based its decision on this point is shown by the following excerpts from its opinion (R. 82, 83):

> "It is argued that the state may charge for the commercial use of its highways. We have already stated that the use plaintiff makes of the highways is not a privilege that will support a tax under the act for other than such extra policing reasonably required by fleet movement. But aside from that there is no basis in the act upon which a highway tax can be estimated or

calculated. As to purposes of fee, see: *Interstate Transit Inc.* v. *Lindsey*, 283 U. S. 183; *Kane* v. *New Jersey*, 242 U. S. 160; *Sprout* v. *South Bend*, 277 U. S. 163, at 170 and 171; *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245."

"For the theory of levying tax on vehicles using highways see *Interstate Transit Inc.* v. *Lindsey*, 283 U. S. 183; *Mallory* v. *Alabama*, 296 U. S. 261; *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245."

It will be observed that the cases cited above by the court are those occasionally misunderstood as laying down the requirement that license fees exacted of an interstate motor vehicle operator must be devoted to highway building and maintenance. The court's misunderstanding of these cases was, we believe, the moving cause of its decision on this particular point.

The bases for claiming that the act can not be justified as imposing a charge for the privilege of using the highways seem to be these: (1) that the act in section 6 (Appendix A) does not appropriate the fees collected to the building and maintenance of highways, but instead places such fees in the "general fund in the State treasury"; (2) that in the last sentence of section 6 there is a statement of the purposes for which the fees collected are "intended to reimburse the state treasury"; and (3) that the use plaintiff makes of the highways does not permit the state to charge him therefor.

We will deal with these in the above order and show that an examination of the act in the light of the decisions of this court and of the Supreme Court of California shows plainly that the act intends and imposes (a) a charge for the privilege of using the state's highways and (b) a charge for traffic regulation. Hence the reasonableness of the fee can be measured by its dual character, and the test is not limited solely to the cost of police regulation of the licensed traffic as the district court stated in its opinion.

The point, of itself, that the act does not appropriate the fees collected to the building and maintenance of highways, but instead places the fees in the "general fund in the State treasury" is immaterial in determining whether the license fee is exacted as a charge for the privilege of using the highways. *Morf* vs. *Bingaman,* 298 U. S. 407. In that case it is held that if an act requiring a license fee of an interstate motor vehicle operator contains terms which identify the fee as a charge for the privilege of using the highways, the use made of the fees collected is of no importance. All that is required is that the act contain one or more indicia (which may or may not be the appropriation of the fees to highway maintenance) that the fee it imposes is for the privilege of using the highways. The license fee acts which have been held invalid are those lacking any indicia of the nature of the fee. *Interstate Transit, Inc.* vs. *Lind-*

sey, 283 U. S. 183; *Sprout* vs. *South Bend,* 277 U. S. 163.

And *Morf* vs. *Bingaman, supra,* definitely establishes that the act in question here is one imposing a charge for the privilege of using the highways. The same element which the court recognized in that case as identifying the license fee as a charge for the privilege of using the highways is present in the California act; that is, the payment of the fee is definitely a pre-requisite to the use of the highways. Thus this court said in *Morf* vs. *Bingaman, supra:*

> "Unlike the general tax in *Interstate Transit, Incorporated v. Lindsey,* 283 U. S. 183, the levy of which was unrelated to the use of the highways, grant of the privilege of their use is by the present statute made conditional upon payment of the fee. The manner of its collection, not unlike that of a toll for the privilege of entering and using the highways, definitely identifies it as a charge for the privilege."

The act here involved, Chapter 402, plainly fits the above. Thus it is provided in the act:

> "Sec. 2. No person, firm or corporation shall use any highway in this state for caravaning motor vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California a special permit as to each vehicle so caravaned, for use of the highways of this state in caravaning such vehicle * * *.

"Sec. 3. As a condition precedent to the issuance of any special permit provided for in the previous section of this act the Motor Vehicle Department of the State of California shall charge and collect a fee of fifteen dollars for each motor vehicle for which a caravan permit may be issued * * *.

"Sec. 5. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this state by motor vehicle * * *." (Appendix A.)

B. With those provisions in the act, and the illumination afforded by *Morf* vs. *Bingaman, supra,* the only question remaining at this point is the effect, if any, of the last sentence of section 6. A consideration of such sentence and the law applicable thereto, as shown by other statutes of California and by the decisions of this court and of the Supreme Court of California, shows clearly and conclusively that such sentence has no effect whatsoever in altering the preceding structure of the act, which was devoted to creating a license fee charge for the privilege of using the state's highways for commercial gain.

To determine the precise meaning and effect of section 6, it is necessary to consider it in connection with other statutes. By the first sentence of section 6 all of the fees collected are required to be paid into the general fund in the State treasury. It is obvious that section 6 does not appropriate

the fees or order their expenditure; when section 6 is ended the fees are simply left in the general fund in the State treasury. The expressed intention in the last sentence of section 6, to reimburse the State treasury, does not appropriate or direct the expenditure of the fees. If that is not sufficiently plain at this point, it will be made so in the consideration of other statutes.

The general fund in the State treasury is defined in section 454, California Political Code, as follows:

> "454. General Fund. The general fund consists of moneys received into the treasury and not specifically appropriated to any other fund."

Let us assume the fees collected have been paid into the general fund. To get them out of the general fund, to expend them, requires an appropriation. Section 22 of Article IV, Constitution of California, provides:

> "No money shall be drawn from the treasury but in consequence of appropriations made by law * * *".

The last sentence of section 6 does not make the necessary appropriation; it does not contain any of the essentials of an appropriation act. Thus in *Ryan* vs. *Riley,* 65 Cal. App. 181, 223 Pac. 1027, the court, in considering what is necessary to effect an appropriation of money in the *general fund,* stated (pp. 187–188):

> "Where the appropriation is made by the legislature and the money is to be paid out of the general fund there seems to be no conflict in the cases and the appropriation must be specific both as to purpose and amount; neither of these requisites can be left indefinite and uncertain."

In that case the court points out that an act appropriating money from the general fund, where are kept the unappropriated moneys, must be couched in more definite terms than an act appropriating money from a special fund, which has, of course, already been set aside for a special purpose. The last sentence of section 6 does not meet these requirements as it does not designate, even indirectly, what state officers are entitled to expend the fees, nor the amount they are to expend. In *McCord* vs. *Slavin,* 143 Cal. 325, 76 Pac. 1104, the court said:

> "An appropriation of public moneys includes a direction or authority for their payment, as well as setting them apart for a particular purpose. Merely directing them to be paid into a particular fund does not effect their appropriation, especially if the moneys of that fund are to be applied for different purposes, as may be directed by law."

Obviously, moneys in the general fund "are to be applied for different purposes, as may be directed by law."

In *Riley* vs. *Forbes,* 193 Cal. 740, 227 Pac. 768, it was held that fees collected by administrative state officials, and intended for administration costs, if paid into the general fund of the State treasury could not be withdrawn by such officials except by virtue of an appropriation act authorizing such withdrawal.

Furthermore, if the legislature has by an act directed money to be paid into a fund for a purpose, but such act does not contain terms sufficient to appropriate such money, the legislature can by a later act withdraw the money from such designated fund and appropriate it for entirely different purposes. *McCord* vs. *Slavin, supra.*

The point of the foregoing is that the last sentence of section 6 of Chapter 402 has no effect upon the use of the money it refers to; such money would be subject to exactly the same handling as at present if such sentence did not exist. Such sentence could be lifted bodily from the act with no effect whatsoever upon the operation of the act or the use of the fees collected.

The money collected under the act can be appropriated by the legislature to the building of highways or the salaries of officers enforcing the act, or other purposes. *McCord* vs. *Slavin,* 143 Cal. 325, 76 Pac. 1104. What the legislature does with the money is immaterial on the question of the nature of the act because the act by its terms shows that it requires a fee for the privilege of using the

highways and for traffic regulation, *Morf* vs. *Bingaman*, 298 U. S. 407, both of which can be required of operators of motor vehicles in interstate commerce, *Morf* vs. *Bingaman*, *supra*.

It is therefore submitted that the last sentence of section 6 can not be looked to alone to determine the nature of the license fee required by the act. A sentence, the absence of which would have no effect whatsoever upon the operation of the act or the uses to which the money can be put, can not overcome preceding structure of the act which is devoted to creating a charge for the privilege of using the highways as well as a police power regulatory fee.

The decisions of this court clearly establish that the construction to be placed on the act is to be determined by the provisions of sections 2, 3, and 5, which mark the fee as a charge for the privilege of using the highways as well as a regulatory fee, and not by the last sentence of section 6; and this for the several reasons following.

1. The rule is that "where a federal question is involved we are not bound by the label attached to the tax or the character ascribed to the law. *We must ascertain for ourselves the true nature of the tax by ascertaining its operation and effect.*" *Schuylkill Trust Company* vs. *Pennsylvania*, 296 U. S. 113. (Italics supplied.) In *Storaasli* vs. *Minnesota*, 283 U. S. 57, the argument opposing a motor vehicle license law was that it imposed

a property tax (concededly beyond the state's power) and the state court had characterized it as such in part. This court said in sustaining the law:

> "This court, while bound by the state court's decisions to the meaning and application of the law, decides for itself the character of the tax, and whether as applied to appellant it affects his constitutional rights. We think it plain that the levy is an excise for the privilege of using the roads."

In *Johnson Transfer & Freight Lines* vs. *Perry*, 47 Fed. (2nd) 900 (D. C. Ga.), the statute defined a motor carrier license fee as an occupation tax. In holding it valid as to an interstate carrier the court said (at p. 903): "Despite this being called an occupation tax, it is in substance a tax to compensate for the use of the road." In *Macallen Co.* vs. *Massachusetts*, 279 U. S. 620, it was said at p. 625:

> "Neither state courts nor legislatures, by giving the tax a particular name, or by using some form of words, can take away our duty to consider its nature and effect."

See, also, as stating the same rules:

United States vs. *One Ford Coupe Automobile*, 272 U. S. 321;

Educational Films Corp. vs. *Ward*, 282 U. S. 379.

2. The rule is that "where a statute is reasonably susceptible of two interpretations, by one of which it would be clearly constitutional and by the other

of which its constitutionality would be doubtful, the former construction should be adopted." *Carey* vs. *South Dakota,* 250 U. S. 118; *Knights Templars' & Masons' Life Indemnity Co.* vs. *Jarman,* 187 U. S. 197; *United States* vs. *Delaware & Hudson Company,* 213 U. S. 366; *Reinecke* vs. *Northern Trust Co.,* 278 U. S. 339; *Panama Railroad Co.* vs. *Johnson,* 264 U. S. 375. So in the present case a construction giving effect to sections 2, 3, and 5, of the act as requiring a fee for the use of the highways as well as a regulatory fee, obviously a plain and reasonable construction, should be adopted in preference to the narrow view that the last sentence of section 6 limits the measurement of the reasonableness of the fee to the cost of regulation alone.

A motor vehicle license statute precisely similar to Chapter 402 in the respects now under discussion was considered by the Supreme Court of Oregon in a leading case, *Camas Stages Company* vs. *Kozer,* 104 Ore. 600, 209 Pac. 95, 25 A. L. R. 27, and was held to "exact compensation for the privilege of operating" motor vehicles upon the public highways. The Oregon statute provided:

> "The provisions of this Act are declared to be an exercise of the police powers of the State of Oregon and this act shall be known as the 'Oregon Motor Vehicle Act.'"

And the statute further stated that its

> "* * * purpose, object, and intent is to provide a comprehensive system for the regulation of all motor and other vehicles."

Those were the only statements in the act of its purpose. The Oregon court, after discussing *Transportation Co.* vs. *Parkersburg,* 107 U. S. 691; *Huse* vs. *Glover,* 119 U. S. 543; *Hendrick* vs. *Maryland,* 235 U. S. 610; *Kane* vs. *New Jersey,* 242 U. S. 160, and other cases, held the fee was exacted for the privilege of using the highways, pointing out that the Oregon law made payment of the license fee a pre-requisite to the use of the highways.

3. The principle of the severability of the invalid in a statute from the valid. *Carey* vs. *South Dakota, supra; Presser* vs. *Illinois,* 116 U. S. 252; *Brazee* vs. *Michigan,* 241 U. S. 340; *Board of Supervisors* vs. *Stanley,* 105 U. S. 305. We think this principle is hardly required here, but it is suggestive. As above shown, the last sentence of section 6 can be severed from the act without affecting in the least its operation or the use of the fees collected.

A case closely similar in principle to the present case, though not as strong, is *Ex parte Schuler,* 167 Cal. 282, 139 Pac. 685, in which the Supreme Court of California considered an automobile license statute. One section provided the license fees should be collected by the State Treasurer. Another directed the Treasurer, after deducting

administration expense, to place one-half of the net receipts in the state "motor vehicle fund," and to return one-half to the "counties from which received." The court held the latter provision violative of the State Constitution because imposing a tax for county purposes without conforming to the constitutional requirements for legislation of that character. Nevertheless the court held the act could be sustained in its essential entirety by construing that there was a legislative intent "to impose this tax irrespective of the disposition of the proceeds," and that the provision for return to the counties of one-half of the net receipts could be disregarded, leaving all of the moneys collected in the State treasury. In the *Schuler* case a part of the statute was eliminated by construction to avoid unconstitutionality, and this changed its effect as to distribution of the license fees. In our case there is no need to pare off anything. The phraseology relied upon by appellee and the District Court in the instant case has no effect whatsoever upon the working of the act or disposition of the proceeds. On the other hand, the parts of Chapter 402 (Secs. 2, 3, 5) which indelibly stamp it as imposing a charge for the use of the highways, under the rule of *Morf* vs. *Bingaman,* 298 U. S. 407, give it life. The *Schuler* opinion refers to the "saving clause" in the act considered. However, the absence of a saving clause does not defeat the principle of severability, applied with particular

force by this court in the consideration of state statutes, *Carey* vs. *South Dakota*, 250 U. S. 118; *Board of Supervisors* vs. *Stanley*, 105 U. S. 305; *Presser* vs. *Illinois*, 116 U. S. 252; *Brazee* vs. *Michigan*, 241 U. S. 340.

C. We now proceed to a discussion of the facts relating to the question whether the fee is unconstitutionally excessive. It hardly seems necessary to observe that the burden was on appellee so to prove. *Hendrick* vs. *Maryland*, 235 U. S. 610; *Interstate Busses Corporation* vs. *Blodgett*, 276 U. S. 245; *Interstate Transit, Inc.* vs. *Lindsey*, 283 U. S. 183; *Morf* vs. *Bingaman*, 298 U. S. 407.

As shown above, the permit fee required by Chapter 402 is both a charge for the privilege of using the highways and a police power traffic regulatory fee; it is to be considered in both aspects when measuring its validity by its amount. (See cases last above cited). In *New Mexico, ex rel. McLean* vs. *Denver & Rio Grande R. R. Co.*, 203 U. S. 38, this court considered a complaint that an inspection fee laid on hides moving in interstate commerce, but not laid on hides in intrastate commerce, produced so much income that in reality it amounted to a tax for revenue. In holding that the amount of the fee did not affect the validity of the law the court said (at page 55):

> "The law being otherwise valid, the amount of the inspection fee is not a judicial question; it rests with the legislature to fix the amount, and it can only present a valid objection when

it is shown that it is so unreasonable and disproportionate to the services rendered as to attack the good faith of the law."

The distances appellee's cars may move have been shown approximately above. The least distance any of them move is the 235 miles from Yuma, Arizona, to Los Angeles. Half of them move farther than that distance (R. 61). Some of them move on to San Francisco, 400 to 470 miles farther depending on the route. Some go from Los Angeles to states to the north, crossing the northern boundary of California 950 miles from Los Angeles. Were it not for Chapter 402 such cars could be moved 1185 miles over California's highways without paying anything for the privilege. Whatever may be the value of comparisons, in *Morf* vs. *Bingaman,* 298 U. S. 407, a fee of $7.50 per car was sustained where the car traveled just 166 miles over the New Mexico highways, and this court said:

"As the tax is not on the use of the highways but on the privilege of using them, without specific limitation as to mileage, the levy of a flat fee not shown to be unreasonable in amount, rather than of a fee based on mileage, is not a forbidden burden on interstate commerce."

The character of the commerce conducted by appellee and others engaged in caravanning has been shown. It requires and justifies regulation. *Morf* vs. *Bingaman, supra.* It stands without question in the evidence that the actual administration cost of issuing the permits provided in Chapter 402

is $5 for each permit (R. 58). An increase of clerical help was required in the Division of Registration of the Department of Motor Vehicles, at the border stations, at Sacramento, and the branch offices (R. 59). This increased organization and the caravan law have produced the very desirable result of greatly eliminating the bringing in of stolen cars and the fraudulent registration and sale of used cars as new (R. 59). In the California Highway Patrol six additional men, who could be dispensed with where employed if caravanning were entirely eliminated, were employed because of caravanning six months before the act was passed (R. 53). After that additional men were employed or assigned to the regulation of caravanning (R. 52, 53) and at the trial (November 29, 1935) the Chief of the Highway Patrol testified that the assignment of more men to such duty would be necessary (R. 54).

The district court, in its mathematical demonstration that the $15 fee is excessive and arbitrary (R. 83), failed to take into consideration the services of all the highway patrol officers on the routes taken by caravans in the enforcement of the Vehicle Code as to such caravans, but merely calculated the reasonableness of the fee on the additional cost to the state by way of salaries paid for the additional help employed by reason of caravanning.

Appellee appears to contend that since Chapter 402 in itself contains no regulatory provisions except the provision in section 2 requiring that a space of 150 feet be maintained between vehicles or groups of vehicles, it can be regarded as a regulatory measure only with respect to such spacing provision, and that the cost of regulation must be limited to that one provision only. This contention is easily answered. In the first place, issuing the permit and keeping a record of the cars caravanned into the state are valuable regulatory measures, as shown by the evidence (R. 59). In the second place, while Chapter 402 defines the class and requires payment of a regulatory fee, the permissible cost of regulation is not limited to the cost of enforcing the regulatory provisions found in the act itself but extends to the cost of enforcing any and all regulatory statutes of the state which are applicable to the class defined in Chapter 402. *Gregg Dyeing Co.* vs. *Query,* 286 U. S. 472. Such applicable laws are found in the California Vehicle Code (Appendix B). By section 135 (a) thereof the members of the California Highway Patrol have the primary duty to enforce "the provisions of this code and of any and all other acts respecting the use or operation of vehicles upon public highways."

In addition to these elements, the state can charge for the wear and tear upon its roads occasioned by the operation of caravans, the movement

of the 60 to 70 per cent of tandem-towing hook-ups in appellee's caravans and other elements as discussed in *Morf* vs. *Bingaman, supra.* The state can require a fee for the privilege of using its highways for the conduct of business thereon. *Clark* vs. *Poor,* 274 U. S. 554; *Interstate Busses Corporation* vs. *Blodgett,* 276 U. S. 245; *Hicklin* vs. *Coney,* 290 U. S. 169; *Aero Mayflower Transit Co.* vs. *Georgia Public Service Commission,* 295 U. S. 285; *Hodge Drive-it-Yourself Co.* vs. *Cincinnati,* 284 U. S. 335; *Huse* vs. *Glover,* 119 U. S. 543; *Transportation Co.* vs. *Parkersburg,* 107 U. S. 691; *Lindsay and Phelps Co.* vs. *Mullen,* 176 U. S. 126; *Postal Telegraph Cable Co.* vs. *Richmond,* 249 U. S. 252; *Hendrick* vs. *Maryland,* 235 U. S. 610; *Kane* vs. *New Jersey,* 242 U. S. 160.

It is submitted that the record not only shows that appellee has failed to sustain the burden of proving the fee is excessive but shows affirmatively that the fee is not excessive. Another of the district court's findings may well be discussed at this point. The district court found as a fact:

> "Although plaintiff's business is large and lucrative, he operates upon a small margin of profit, and the fifteen dollar permit fee for each automobile he brings into California would practically absorb his net profit and would ruin his business, and a large part of the used car business in California." (Last sentence of 19th finding, R. 40.)

The only evidence on which the court based the foregoing is appellee's testimony as to the amount of his profit per car (R. 61).

Obviously, such a finding and the testimony upon which it is premised are not, of themselves, sufficient to warrant a conclusion that the fee is unconstitutionally excessive. *A. Magnano Co.* vs. *Hamilton,* 292 U. S. 40, at 47; *New Mexico, ex rel. McLean* vs, *Denver & Rio Grande R. R. Co.,* 203 U. S. 38, at 55. The mere fact that appellee can not continue to do business at a profit, after paying the fee, has no bearing on the question whether the fee is unconstitutionally excessive. (See cases last above cited.)

But we do not rest on that; rather, we submit that the court's finding is utterly wrong. In following the above conclusion based on appellee's testimony as to his margin of profit the court overlooked the plain and undisputed facts which demanded a contrary conclusion. Appellee testified that out of 3000 used cars he purchased in 1935, only fifty were bought in California (R. 63) and that:

> "The reason for my business is that dealers demand used cars and they come to me to get them because I have available cars, and they cannot get them in any other way. *If the used car industry is to exist they must get used cars from without the state of California.* There are not enough used cars in the state to meet the demand therefor." (R. 63.)

Now it is obvious from that state of facts that the $15 license fee could be added to the retail price and passed on to the purchaser, leaving appellee's margin of profit intact. There are no used cars on the market to compete with the used cars brought in from without the state. With demand and source of supply in such relation, the addition of $15 uniformly to the retail purchase price of used cars throughout the state would not stop buying any more than do sales taxes.

III

THE PROVISION IN SECTION 1 OF CHAPTER 402, THAT THE INCLUDED CLASS SHALL BE SUBJECT TO ALL OF THE LAWS RELATIVE TO THE TRANSPORTATION OF PROPERTY FOR HIRE BY MOTOR VEHICLE, DOES NOT VIOLATE THE 14TH AMENDMENT, EITHER IN IMPOSING UNCONSTITUTIONAL RESTRICTIONS UPON APPELLEE OR MAKING HIM ASSUME THE STATUS OF COMMON CARRIER AGAINST HIS WILL

In his bill of complaint appellee alleged (R. 8), that his constitutional rights guaranteed by the Fourteenth Amendment are impaired by the last sentence of section 1 of Chapter 402, which is:

> "The caravaning of motor vehicles as herein defined shall be considered as the transportation of property for hire by motor vehicle and shall be subject to all the laws of this State relative to the transportation of property for

hire by motor vehicle upon the public highways of this State."

The district court held against appellee on this contention. In its opinion it states (R. 82–83):

> "Although there is language in the act that might seem to require it, we think no pains need be taken to discuss in full the claim of plaintiff that he need pay a $25.00 fee (it has not been demanded) before applying for the special permit hereinbefore mentioned nor that he is compelled against his will and against the facts obtaining, to assume that status of a common carrier or a carrier for hire (California Carriers' Act). The so-called Caravan Act itself excludes such fee and if the law attempts to fix upon plaintiff a status not justified by the facts, it goes beyond the power of the legislature and is to that extent void as to him. *Frost Trucking Co.* vs. *R. R. Comm.,* 271 U. S. 583. It does not affect the other part of the statute, however, and is severable. For the theory of levying tax on vehicles using highways see *Interstate Transit Inc.* v. *Lindsey,* 283 U. S. 183; *Mallory* v. *Alabama,* 296 U. S. 261; *Interstate Busses Corp.* v. *Blodgett,* 276 U. S. 245.
>
> "We have examined the California Carriers' Act (C. 223, Stat. 1935) and find that it does not affect plaintiff in any but in the most incidental and inconsequential manner, if at all."

The opinion determines what the district court decided in entering its decree, *Corcoran* vs. *Chesapeake and Ohio Canal Company,* 94 U. S. 741, *Phelps* vs. *Harris,* 101 U. S. 370, particularly where

the court's conclusions of law and decree, as here, are in general terms (R. 44-45).

The district court made no findings of fact that appellants or other state officers have taken any action, or made any demand, unconstitutional or otherwise, against appellee with respect to this portion of the statute, as, indeed, they have not. Appellants' joint return and answer disavows any attempt to collect any other fees from appellee except the $15 fee required by Chapter 402 or to impose any requirements upon appellee of which he complains in this respect (R. 15, 16, Pars. IV, VIII). The reason is, as the district court said, the California Highway Carriers' Act (Appendix D) does not affect appellant "in any but in the most incidental and inconsequential manner, if at all." That is, even if, as provided by section 1 of Chapter 402, appellee is subject to all the laws relative to the transportation of property for hire by motor vehicle, that provision is of no effect whatsoever unless there are laws relative to the transportation of property for hire by motor vehicle which can be applied, as a practical matter, to one hauling his own property, like appellee.

The California Highway Carriers' Act does not contemplate the application of its provisions to persons moving their own property; by the last words of section 1 (f) it does not apply to "persons hauling their own products." The only provisions it contains which can possibly apply to appellee are

the requirement of a permit (which the return and answer states will be granted to appellee without cost upon request, R. 16), and the *liability* insurance requirement which can validly be imposed upon appellee, *Hodge Drive-it-Yourself Co.* vs. *Cincinnati,* 284 U. S. 335, *Continental Baking Co.* vs. *Woodring,* 286 U. S. 352. As the California Highway Carriers' Act plainly applies to him in no other particulars, appellee can not claim that his rights are invaded by the application of other provisions to him unless it is made to appear that the state's officers are threatening to require his compliance with such nonapplicable provisions. *Continental Baking Co.* vs. *Woodring, supra; Hicklin* vs. *Coney,* 290 U. S. 169; *Clark* vs. *Poor,* 274 U. S. 554; *Stephenson* vs. *Binford,* 287 U. S. 251.

The above section can not by any construction be said to require appellee to become a *common* carrier, which was condemned in *Frost Trucking Co.* vs. *Railroad Commission,* 271 U. S. 583. It does not even contemplate making him a carrier for hire of any species, but simply subjects him to such of the provisions of the California Highway Carriers' Act (Appendix D) as are applicable to him. (*Continental Baking Co.* vs. *Woodring, supra.*)

CONCLUSION

For all of the foregoing reasons, which are summarized in the subject index, and in the summary of argument on page 24 hereof, it is respectfully submitted that the act here in question, Chapter 402, Statutes of 1935 of California, should be declared constitutional by this court, and that the decree of the district court should be reversed and the injunction against the enforcement of this act dissolved. We believe this result is required by settled principles of law announced by the decisions of this court, which we have cited.

Respectfully submitted.

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APPENDIX A

"THE CARAVAN ACT"

CHAPTER 402, STATUTES OF 1935 OF CALIFORNIA
(Page 1453)

An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for violations thereof.

(Approved by the Governor July 6, 1935. In effect September 15, 1935.)

The people of the State of California do enact as follows:

SECTION 1. The term "caravaning" as used in this act shall mean the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser, whether such agent, dealer, manufacturers' representative, purchaser or prospective purchaser may be located within or without this State. The caravaning of motor vehicles as herein defined shall be considered as the transportation of property for hire by motor vehicle and shall be subject to all the laws of this State relative to the transportation of property for hire by motor vehicle upon the public highways of this State.

SEC. 2. No person, firm or corporation, shall use any highway in this State for caravaning motor vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicle, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent

place thereon where it may be readily legible. It shall be unlawful to operate three or more vehicles or groups of vehicles in caravan unless a space of at least one hundred fifty feet shall at all times be maintained between each vehicle or group of vehicles being so caravaned.

SEC. 3. As a condition precedent to the issuance of any special permit provided for in the previous section of this act the Motor Vehicle Department of the State of California shall charge and collect a fee of fifteen dollars for each motor vehicle for which a caravan permit may be issued, whether such vehicle be operated under its own power or in tow of another motor vehicle; provided, however, that no such permit shall be issued by said Motor Vehicle Department unless and until the applicant therefor shall have produced evidence to the satisfaction of said Motor Vehicle Department that all of the laws of this State relating to the transportation of property upon the public highways therefor for hire shall have been complied with.

SEC. 4. No permit issued under this act for caravaning motor vehicles or vehicles shall be transferable either as between persons or as to the vehicle for which it is issued, and shall only be valid for the trip or trips to be specified in said permit, and in no event shall such permit be valid for a period of more than ninety days after it shall have been issued. Such permit shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department. Such permit shall be conditioned upon the permitee complying with all laws of the State of California and the United States.

SEC. 5. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by motor vehicle during the period that such motor vehicle may be operated under and in accordance with such permit upon the public highways in this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to the transportation of property for hire.

SEC. 6. All fees from the issuance of permits collected by the Motor Vehicle Department under this act shall be paid into the general fund in the State treasury.

Said department shall file with the Controller on or before February first and August first of each year a detailed account of the receipts of said Department from this source for the six months next preceding. The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted, so as to provide for the safety of traffic on such highways where caravaning is being conducted.

SEC. 7. Violation of the provisions of section 2 or of section 4 of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

APPENDIX B

PARTS OF THE "VEHICLE CODE" OF CALIFORNIA

Chapter 27, Statutes of 1935 of California, as amended by chapters 154, 156, 171, 332, 376, 384, 390, 508, 524, 527, 546, 570, 589, 590, 591, 592, 605, 671, 713, 714, 764, 765, 778, 783, 808, and 847, Statutes of 1935 of California.

101. Department Created. A department of the government of the State of California to be known as the Department of Motor Vehicles is hereby created.

105. Office of Director Created. The department shall be under the control of a civil executive officer to be known as the Director of Motor Vehicles, which office is hereby created.

108. Organization of Department. The director with the approval of the Governor shall organize the department in such manner as he may deem necessary properly to segregate and conduct the work of the department. The work of the department is hereby divided into at least two divisions, to be known respectively as the Division of Registration and the Division of Enforcement, to be known as the California Highway Patrol.

109. Office of Registrar of Vehicles Created. The Division of Registration shall be under the control of a civil executive officer to be known as the Registrar of Vehicles, which office is hereby created.

111. Office of Chief of California Highway Patrol Created. The California Highway Patrol shall be under the control of a civil executive officer to be known as the Chief of the California Highway Patrol, which office is hereby created. The Chief of the California Highway Patrol shall be appointed by the director subject to the approval of the Gov-

ernor, pursuant to the provisions of Article XXIV of the State Constitution, and shall receive an annual salary of seven thousand two hundred dollars. The Chief of the California Highway Patrol shall execute and deliver, as provided by law, an official bond in the sum of twenty-five thousand dollars.

135. Police Authority of Members of the California Highway Patrol. All members of the California Highway Patrol shall have the power:

(a) Of peace officers provided that the primary duty of the California Highway Patrol shall be the enforcement of the provisions of this code and of any and all other acts respecting the use or operation of vehicles upon public highways, and the members thereof shall not act as peace officers in enforcing any other law except

(1) when in pursuit of any offender or suspected offender,

(2) to make arrests for crimes committed in their presence or upon any highway.

(b) At all times to direct all traffic in conformance with the provisions of law, and in the event of a fire or other emergency or to expedite traffic or to insure safety to direct traffic as conditions may require notwithstanding the provisions of this code.

(c) When on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of this code, to require the driver thereof to stop and submit to an inspection of such vehicle, the equipment, license plates and registration card thereon or to a test of the light or brake equipment upon such vehicle.

(d) To inspect any vehicle of a type required to be registered hereunder on a highway or in any garage or repair shop for the purpose of locating

stolen vehicles and investigating the title and registration thereof.

(e) To serve all warrants relating to the enforcement of this code.

215. Registration of Foreign Vehicle Used Commercially. A nonresident owner of a foreign vehicle of a type subject to registration hereunder which is used within this State for the transportation of persons or property for compensation or profit shall register such vehicle as provided in Chapter 1 of this division and the same fees shall be collected as upon the registration of a like vehicle owned by a resident of this State.

216. Nonresidents Conducting Business in this State. Every nonresident, including any foreign corporation, carrying on business within this State and owning and regularly operating in such business any vehicle of a type subject to registration hereunder shall register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this State.

250. Unlawful to Drive Unless Licensed. (a) It is a misdemeanor for any person to drive a motor vehicle upon a highway unless he then holds a valid operator's or chauffeur's license issued hereunder, except such persons as are expressly exempted under this code.

(b) It is a misdemeanor for any person to drive a motor vehicle upon a highway as a chauffeur unless he then holds a chauffeur's license duly issued hereunder, except such persons as are expressly exempted under this code.

251. Certain Persons Exempt. (a) No person in the naval or military service of the United

States, while acting as chauffeur in such service, need obtain a chauffeur's license.

(b) No person while driving or operating implements of husbandry incidentally operated or moved over a highway, need obtain an operator's or chauffeur's license.

252. When Nonresident Exempt. (a) A nonresident over the age of twenty-one years having in his immediate possession a valid operator's license issued to him in his home State or country may operate a motor vehicle in this State as an operator only for not to exceed one year without obtaining a license hereunder.

(b) A nonresident over the age of twenty-one years having in his immediate possession a valid chauffeur's license issued to him in his home State or country may operate a motor vehicle in this State without obtaining a license hereunder, but such nonresident must be licensed as a chauffeur under this code before accepting employment as a chauffeur from a resident of this State.

(c) A nonresident over the age of twenty-one years whose home State or country does not require the licensing of operators or chauffeurs may operate a foreign vehicle owned by him for not to exceed thirty days upon display of a valid nonresident permit issued under the provisions of this code without obtaining a license hereunder.

DIVISION VI. REGISTRATION AND LICENSE FEES

370. Registration Fees. A registration fee of three dollars shall be paid to the department for the registration of every vehicle of a type subject to registration, except for such thereof as are expressly

exempted under this code from the payment of registration fees.

372. Weight Fees for Commercial Vehicles. (a) In addition to the registration fees specified in section 370, there shall be paid fees for the registration of every vehicle of a type subject to registration designed, used or maintained for the transportation of persons for hire, compensation or profit or designed, used or maintained primarily for the transportation of property as set forth in this section.

(c) Any vehicle designed, used or maintained as described in subdivision (a) hereof other than an electric vehicle when equipped wholly with pneumatic tires shall pay fees for registration according to the following schedule:

Weight	*Fee*
(1) When unladen, 3000 pounds or more, but less than 6000 pounds	$8.00
(2) When unladen, 6000 pounds or more, but less than 10,000 pounds and limited hereunder to a gross weight of vehicle and load of not exceeding 22,000 pounds	$40.00
(3) When unladen, 10,000 pounds or more and limited hereunder to a gross weight of vehicle and load of not exceeding 22,000 pounds	$50.00
(4) When unladen, 6000 pounds or more and entitled hereunder to a gross weight of vehicle and load in excess of 22,000 pounds	$70.00

Chapter 6. Speed Laws.

510. Basic Speed Laws. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for the

traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

511. Prima Facie Speed Limits. The speed of any vehicle upon a highway not in excess of the limits specified in this section is lawful unless clearly proved to be in violation of the basic rule declared in section 510 hereof.

The speed of any vehicle upon a highway in excess of any of the limits specified in this section is prima facie unlawful unless the defendant establishes by competent evidence that any said speed in excess of said limits did not constitute a violation of the basic rule declared in section 510 hereof at the time, place and under the conditions then existing.

The prima facie limits referred to above are as follows:

(a) Fifteen miles per hour:

(1) When passing a school building, or the grounds thereof, contiguous to the highway during school recess or while children are going to or leaving such school during opening or closing hours or while the playgrounds of any such school are in use by school children.

(2) When traversing a grade crossing of a steam, electric or street railway if during the last one hundred feet of the approach to such crossing the driver does not have a clear and unobstructed view of such crossing and of any traffic on such railway for a distance of four hundred feet in both directions along such railway.

(3) When approaching or upon a curve or any other part of a highway in the event the driver's view is obstructed within a distance of one hundred

feet along the highway in the direction in which such driver is proceeding.

(4) When traversing any intersection of highways if during the last one hundred feet of his approach to such intersection the driver does not have a clear and unobstructed view of such intersection and of any traffic upon all of the highways entering such intersection for a distance of one hundred feet along all such highways, except upon a through highway or at traffic-controlled intersections, in which event in a business or residence district the district speed shall apply and elsewhere the speed shall be thirty miles per hour.

(b) Twenty miles per hour:

(1) In any business district.

(2) When upon the ground of any public school, State university, State college, or State, county, or municipal institution or building.

(c) Twenty-five miles per hour in any residence district.

(d) Forty-five miles per hour under all other conditions.

514. Minimum Speed Law. No person shall drive upon a highway at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or because upon a grade or when the vehicle is a motor truck or motor truck towing another vehicle necessarily or in compliance with law proceeding at reduced speed.

Chapter 7. Driving on Right Side of Roadway—Overtaking and Passing.

525. Drive On Right Side of Roadway. Upon all roadways of sufficient width a vehicle shall be driven

upon the right half of, and as close as practicable to the right-hand curb or edge of, such roadway, except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement.

(b) When placing a vehicle in a lawful position for, and when such vehicle is lawfully making, a left turn.

(c) When the right half of a roadway is closed to traffic while under construction or repair.

(d) Upon a roadway designated and signposted for one-way traffic or upon a roadway divided into three or more clearly marked lanes for traffic.

526. Driving on Roadways Laned for Traffic. Whenever any roadway has been divided into three or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway ahead is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signed posted to give notice of such allocation.

531. Following Too Closely. (a) The driver of a motor vehicle shall not follow another vehicle more

closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway.

(b) The driver of any motor truck or motor truck drawing another vehicle when traveling upon a roadway outside of a business or residence district shall not follow within three hundred feet of another motor truck or motor truck drawing another vehicle. The provisions of this subdivision shall not prevent overtaking and passing nor shall the same apply upon any lane especially designated for use by motor trucks. This subdivision shall not apply to motor vehicles drawing highway construction or maintenance equipment while being used in highway construction or maintenance work.

CHAPTER 13. STOPPING, STANDING OR PARKING.

582. Stopping, Standing or Parking Outside of Business or Residence Districts. Upon any highway outside of a business or residence district no person shall stop, park or leave standing any vehicle whether attended or unattended, upon the paved or improved or main traveled portion of the highway when it is practicable to stop, park or so leave such vehicle off such part or portion of said highway.

CHAPTER 2. REQUIRED LIGHTING EQUIPMENT.

618. When Vehicles Must Be Equipped. (a) Every vehicle upon a highway at any time from a half hour after sunset to a half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible any person or vehicle on the highway at a distance of two hundred feet shall be equipped with lighted lamps and lighting devices as respectively provided in this chapter

for different classes of vehicles subject to the exceptions set forth in this chapter.

619. Headlamps on Motor Vehicles. Every motor vehicle other than a motorcycle, at the times specified in section 618 hereof, shall be equipped with two lighted headlamps, no more and no less, mounted on opposite sides of the front of said vehicle, and, except as to vehicles registered prior to January 1, 1930, they must be located directly above or in advance of the front axle of said vehicle. Said headlamps shall be located at a height measured from the center of the headlamps of not more than forty-two inches nor less than thirty inches above the level surface upon which said vehicle stands, except, if the said vehicle was registered prior to August 14, 1929, said headlamps may be located at a height so measured of not more than fifty-four inches above the level surface upon which such vehicle stands.

621. Rear Lamps and Reflectors. (a) Every motor vehicle and every vehicle which is being drawn at the end of a train of vehicles at the times specified in section 618 hereof shall be equipped with at least one or not to exceed two lighted rear lamps exhibiting red light plainly visible from a distance of 500 feet to the rear except that every vehicle or the vehicle at the end of a train of vehicles which vehicle or train of vehicles is subject to the special speed regulations in section 515 shall be equipped with two such lighted rear lamps which shall be mounted at the left and right side respectively on the rear of the vehicle.

679. Unlawful to Operate Vehicle Without Required Equipment or in Unsafe Condition. No person shall operate or move on any highway

any motor vehicle or any combination of vehicles unless said vehicle or combination of vehicles is equipped as required by this code and is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

680. Members of Highway Patrol May Inspect Vehicle and its Equipment. (a) Any member of the California Highway Patrol having reasonable cause to believe that any vehicle or combination of vehicles is not equipped as required by this code or is in such unsafe condition as to endanger the driver or other occupant or any person upon the highway, may require the driver thereof to stop and submit such vehicle or combination of vehicles to an inspection of the mechanical condition or equipment thereof and such test with reference thereto as may be appropriate.

APPENDIX C

PART OF "VEHICLE LICENSE FEE ACT"

Chapter 362, Statutes of 1935 of California. Effective September 15, 1935. Operative January 1, 1936.

SECTION 1. "Vehicle" as used herein means every vehicle subject to registration under the Vehicle Code.

"Department" means the Department of Motor Vehicles.

SEC. 2. A license fee is hereby imposed for the privilege of operating in this State any vehicle. The annual amount of such license fee shall be a sum equal to one and three-quarters per cent of the actual market value of such vehicle, as determined by the department. The department annually shall compile and publish a list showing the market val-

ues as determined by it of each class of vehicle subject to the license fee hereby imposed, such vehicles being classified by make, type and year of manufacture. The license fee imposed by this act shall not apply to any vehicle not subject to registration under the Vehicle Code, nor to any vehicle owned by the State, any political subdivision of the State, or any city, city and county, county, district or public corporation.

SEC. 5. The license fee imposed under this act is in addition to any and all licenses and taxes otherwise imposed, except that no tax according to value shall hereafter be levied or imposed upon any vehicle upon which is paid the license fee required by this act. Such vehicles are hereby exempted from all taxes, State, county or municipal, according to value levied for State or local purposes.

SEC. 6. Whenever any vehicle is operated upon any highway of this State without the license fee having first been paid as required by this act, such fee is delinquent.

APPENDIX D

"HIGHWAY CARRIERS' ACT."

An act regulating the use of public highways for commercial purposes by certain motor vehicles operated thereon for the transportation of property for compensation; preventing discriminations between various forms of transportation; conferring powers upon the Railroad Commission with respect to the transportation of property for compensation by said motor vehicles; providing penalties for the violation of this act, and repealing all acts inconsistent with the provisions of this act.

(Chapter 223, Statutes of 1935 of California.)

The use of the public highways for the transportation of property for compensation is a business

affected with a public interest and it is hereby declared that the purpose of this act is to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public.

SECTION 1. (a) The term "corporation" when used in this act includes a corporation, a company, an association and a joint stock association.

(b) The term "person" when used in this act includes an individual, a firm or a copartnership.

(c) The term "public highway" when used in this act includes every public street, road or highway in this State.

(d) The term "Railroad Commission" when used in this act means the Railroad Commission of the State of California.

(e) The term "motor vehicle" when used in this act means every motor truck, tractor, or other self-propelled vehicle used for transportation of property over the public highways, otherwise than upon fixed rails or tracks, and any trailer, semitrailer, dolly or other vehicle drawn thereby.

(f) The term "highway carrier" when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by

any court whatsoever engaged in transportation of property for compensation or hire as a business over any public highway in this State by means of a motor vehicle or motor vehicles. However, it does not include carriers operating exclusively within the limits of a single incorporated city or city and county, nor does it include persons rendering casual transportation services as an accommodation, and not in the usual or ordinary course of business of such person, nor does it include persons hauling their own products.

(g) The term "highway common carrier" when used in this act means every highway carrier operating as a common carrier subject to regulations as such by the Railroad Commission under Chapter 213 of the Statutes of 1917, as amended.

(h) The term "radial highway common carrier" when used in this act means every highway carrier operating as a common carrier not heretofore subject to regulation as such by the Railroad Commission under Chapter 213 of the Statutes of 1917, as amended.

(i) The term "highway contract carrier" when used in this act means every highway carrier other than a highway common carrier as defined in subsection (g) and every radial highway common carrier as defined in subsection (h).

SEC. 2. No highway carrier other than a highway common carrier shall engage in the business of the transportation of property for compensation by motor vehicle over any public highway in this State, except in accordance with the provisions of this act, which the Legislature hereby declares to be enacted under the power of the State to regulate the use of public highways.

SEC. 3. Except as hereinafter provided, no highway carrier, other than a highway common carrier, shall engage in the business of transportation of property for compensation by motor vehicle on any public highway in this State without first having obtained from the Railroad Commission a permit authorizing such operation; provided, however, that any highway carrier subject to the provisions of this act, who is in business on the effective date of this act, shall file his application with the commission within thirty days after this act shall take effect. Any highway carrier desiring a permit to operate hereunder as a highway carrier other than a highway common carrier, shall file a petition therefor with the Railroad Commission. Such petition shall set forth the name and address of the applicant; the names and addresses of its officers, if any; full information concerning the financial condition and physical properties of applicant; and such other information necessary to the enforcement of this act, as the Railroad Commission may, by order, require. Upon compliance with this act a permit must be issued by the commission, but no such permit shall be granted to a foreign corporation. Pending the issuance of any permit by the commission, the continuance of such operation shall be lawful. Any operating permit not exercised for a period of one year shall lapse and terminate.

SEC. 4. No person or corporation shall be permitted by the Railroad Commission to engage, nor shall any person or corporation engage in the transportation of property on the public highway, both as a common carrier and as a highway contract carrier of the same commodities between the same points.

Any person or corporation who, prior to the effective date of this act, operated as both a common carrier and as a highway contract carrier, must, in order to continue operation after the effective date of this act, elect whether such person or corporation will continue to operate as a highway contract carrier, or as a common carrier of the same commodities between the same points.

SEC. 5. The Railroad Commission shall, in granting permits under the provisions of this act, require the highway carrier to procure, and continue in effect during the life of the permit, adequate protection, as required in section 6 hereof, against liability imposed by law upon such highway carrier for the payment of damages for personal bodily injuries (including death resulting therefrom) in the amount of not less than five thousand dollars on account of bodily injuries to, or death of, one person; and protection against a total liability of such highway carrier on account of bodily injuries to, or death of, more than one person, as a result of any one accident, in the amount of not less than ten thousand dollars; and protection in an amount of not less than five thousand dollars for one accident resulting in damage or destruction of property whether the property of one, or more than one claimant.

SEC. 6. The protection required under section 5 shall be evidenced by the deposit with the Railroad Commission, covering each vehicle used or to be used under the permit applied for, of a policy of public liability and property damage insurance, issued by a company licensed to write such insurance in the State of California; or of a bond of a surety company licensed to write surety bonds in the State of California; or of a personal bond, with such sureties

as the Railroad Commission shall find adequate to guarantee the protection prescribed in section 5 hereof; or it shall be evidenced by a trust fund in the amount of fifteen thousand dollars, to be held in trust by some institution or person acceptable to the Railroad Commission; or by a combination of any of or all of said methods in such manner that the aggregate of the protection or funds available therefor shall equal the principal sum of not less than fifteen thousand dollars, and such highway carrier shall have the option of the method to be used in obtaining such protection, and may change from one method to another, from time to time, with the consent of the Railroad Commission.

SEC. 7. The protection against liability as outlined in section 5 hereof must be continued in effect during the life of the permit, and the policy of insurance, surety bond or personal bond shall not be cancellable on less than ten (10) days written notice to the Railroad Commission. The Railroad Commission shall have power to establish such rules and regulations as may be necessary to carry out the provisions of sections 5 to 7, inclusive.

SEC. 8. Each highway carrier shall display on each vehicle operated by it, a distinctive license plate in the form to be prescribed by the Railroad Commission, showing the classification, as herein provided, to which such carrier belongs, but no such license plate shall be issued by the said commission until a permit under this act, or a certificate of public convenience and necessity as provided for under the provisions of Chapter 213 of the Statutes of 1917, as amended, has been issued to such carrier.

[Chapter 213, Statutes of 1917, as amended, was repealed by Chapter 664, Statutes of 1935. See page 207.]

SEC. 9. A fee of three dollars ($3.00) shall be paid to the Railroad Commission for filing each application for an operating permit. Each permittee shall also pay to the Railroad Commission on or before the first day of January of each year, a fee of one dollar ($1.00) for the reregistration of his permit. All moneys collected by the Railroad Commission under this act shall be deposited at least once a month into the State treasury, to the credit of the general fund, and a detailed statement thereof shall be transmitted to the State Controller.

SEC. 10. The Railroad Commission shall, upon complaint or upon its own initiative without complaint, establish or approve just, reasonable, and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by any highway carrier other than a highway common carrier, now subject to the jurisdiction of said commission under Chapter 213 of the Laws of 1917, and as amended, for the transportation of property and for accessorial service performed by said highway carrier.

In establishing or approving such rates the commission shall take into account and give due and reasonable consideration to the cost of all of the transportation services performed, including length of haul, any additional transportation service performed, or to be performed, to, from, or beyond the regularly established termini of common carriers or of any accessorial service and the value of the commodity transported and the value of the facility reasonably necessary to perform such transportation service.

In event the commission establishes minimum rates for transportation services by highway carriers, such rates shall not exceed the current rates of common carriers for the transportation of the same kind of property between the same points.

It shall be unlawful for any highway carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the commission under this section.

The commission shall make such rules and regulations as may be necessary to the application of the rates established or approved under the provisions of this act.

[Chapter 213, Statutes of 1917, as amended, was repealed by Chapter 664, Statutes of 1935. See page 207.]

SEC. 11. If any highway carrier other than a common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum rates so established, the Railroad Commission shall, upon finding that the proposed rate is reasonable authorize such rates less than the minimum rates established in accordance with the provisions of section 10 hereof.

SEC. 12. It shall be unlawful for any highway carrier or his agent, servant or employee, directly or indirectly, to offer, remit or give to any shipper or consignee, his agent, servant or employee directly or indirectly, any commission or other consideration to induce such person to deliver to such highway carrier property to be transported; and it likewise shall be unlawful for any shipper or consignee, his agent, servant or employee, to receive from such highway carrier, directly or indirectly,

any such commission or consideration as an inducement to secure the transportation of any such property.

SEC. 13. In all respects in which the Railroad Commission has power and authority under the Constitution of this State or this act, applications and complaints may be made and filed with the Railroad Commission, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review or mandate filed with the Supreme Court of this State, considered and disposed of by said court, in regard to the matters provided for in this act, in the same manner, under the same conditions and subject to the same limitations and with the same effect specified in the Public Utilities Act, so far as applicable.

SEC. 14. Any person or any director, officer, agent or employee of a corporation who shall violate any of the provisions of this act or of any operating permit issued hereunder to any highway carrier, or any order, rule or regulation of said commission, shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than five hundred dollars or imprisoned in the county jail for not more than three months, or both. The operating permit, if any, shall, at the discretion of said commission, be subject to cancellation for such violation, and said commission shall thereupon require the removal from such vehicle operated thereunder of any distinctive symbols or license plates herein provided for, which may have been issued therefor.

SEC. 15. Any person or corporation who violates or fails to comply with any provision of this act,

or who fails, omits or neglects to obey, observe or comply wth any order, decision, rule, direction or requirement or any part or provision thereof, of the commission, is subject to a penalty of not more than five hundred dollars for each offense.

SEC. 16. Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

SEC. 17. In construing and enforcing the provisions of this act relating to penalties, the act, omission or failure of any officer, agent or employee of any person or corporation, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission or failure of the employing person or corporation.

SEC. 18. Actions to recover penalties under this act shall be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. Such action shall be commenced and prosecuted to final judgment by the attorney of the commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions. All penalties recovered by the State in any such action, together

with the costs thereof, shall be paid into the State treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court may approve and order.

SEC. 19. All penalties accruing under this act shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any person or corporation, or any officer, director, agent or employee thereof, or any other corporation or person or be a bar to the exercise by the commission of its power to punish for contempt.

SEC. 20. The provisions of this act shall not apply to:

(a) Transportation service all of which is rendered in territory within the exterior boundaries of an incorporated city, or city and county; provided that such territory shall include the area of any incorporated city situated wholly within such outside limits:

(b) The transportation of baggage and express when such transportation is incidental to that of passengers by passenger stage corporations as defined in section 2¼ of the Public Utilities Act.

SEC. 21. If any section, sentence, clause or part of this act, is for any reason held to be unconstitutional such decision shall not affect the remaining portions of this act. The Legislature hereby declares that it would have passed this act, and each section, sentence, clause, or part thereof, except as hereinbefore specifically provided, irrespective of the fact that one or more sections, sentences, clauses or parts be declared unconstitutional.

SEC. 22. Neither this act nor any provision hereof shall apply to or be construed as a regulation of commerce with foreign nations or among the several States, except in so far as the same may be permitted under the provisions of the Constitution and the acts of Congress of the United States.

SEC. 23. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 24. This act shall be known as the "Highway Carriers' Act."

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